

Exhibit C

1
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF TEXAS

4 Case No.: 4:22-cv-03290 (AHB)

5 -----x

6 MARY LALIBERTE, et al.,

7 Plaintiffs,

8 -against-

9 QUANTA SERVICES, INC., et al.,

10 Defendants.

11 -----x

12 November 1, 2024

3:03 p.m.

13 Central European Time

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15
16 Remote Virtual Zoom Deposition of
17 DONALD C. STONE taken by Defendants, pursuant
to Notice, with the Witness located in Costa
18 Bravo, Spain, before William Visconti, a
Shorthand Reporter and Notary Public within and
19 for the State of New York.
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ALSO PRESENT:

HOWARD BRODSKY, Videographer

CAROLYN CAMPBELL, In-house Quanta Services

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2 IT IS HEREBY STIPULATED AND AGREED
3 by and between the attorneys for the
4 respective parties herein that filing and
5 sealing be and the same are hereby waived.

6 IT IS FURTHER STIPULATED AND AGREED
7 that all objections, except as to the form
8 of the question, shall be reserved to the
9 time of the trial.

10 IT IS FURTHER STIPULATED AND AGREED
11 that the within deposition may be signed
12 and sworn to before any officer authorized
13 to administer an oath with the same force and
14 effect as if signed and sworn to before the
15 Court.

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THE VIDEOGRAPHER: Good morning.

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Here begins the video recorded virtual remote testimony of Donald C. Stone appearing from his location in Costa Bravo, Spain. This deposition is taken by the Defendants in the matter of Mary Laliberte, et al. Plaintiffs versus Quanta Services Inc., et al, Defendants. The case number 4:22-CV-03290 (AHB) in the United States District Court Southern District of Texas.

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Today is Friday, November 1st, 2024. The time is approximately 3:03 p.m. central European standard time. My name is Howard Brodsky and I'm the legal video specialist today with Veritext Legal Solutions with offices located in Philadelphia, Pennsylvania. The court reporter is William Visconti in association with Veritext.

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Counsel have stipulated that the court reporter shall enter all appearances for this proceeding into the stenographic court record and further stipulate and agree that the court reporter may take the

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deponents oath remotely.

Will you court reporter please swear
in the witness.

D O N A L D C. S T O N E,
having been first duly sworn by the Notary Public,
was examined and testified as follows:

MR. ROBERTS: I'm ordering a copy of
the transcript.

EXAMINATION CONDUCTED BY MS. ENGELMAN:

Q. Good afternoon, Mr. Stone. How
are you today?

A. I'm fine. How about yourself?

Q. Good, thank you. My name is Keri
Engelman and I represent Quanta Services in
this matter. And you understand today that
you're here to be deposed about the expert
report that you submitted in this matter.

A. Correct.

Q. We have heard on the record that
you are currently in Spain; is that correct?

A. That is correct.

Q. How long have you been in Spain?

A. Six months. We spend about 6

1 DONALD C. STONE

2 months in here and six months in Florida.

3 Q. I understand that you have been
4 deposed before; is that correct?

5 A. That's correct.

6 Q. I won't spend a lot of time going
7 through some preliminaries since you have been
8 deposed, but I just want to be go through a
9 couple of basics.

10 First of all, if you need a break
11 today, please let me know. I'm happy to take
12 one, my only sort of instruction around that
13 would be if there is a question pending that
14 you answer the question and then we could take
15 that break. That being said, we are in kind of
16 a good rhythm of taking a break every hour or
17 hour and a half to stretch our legs. So that
18 should be fine.

19 If you do not understand a
20 question, of course ask me to clarify. If you
21 do answer the question I'm going to assume that
22 you understood it. Is that fair?

23 A. That's fair.

24 Q. You understand that you just took
25 an oath and that means that you have an

1 DONALD C. STONE

2 obligation to the court to tell the truth just
3 as if you were before the judge in court. Do
4 you understand that?

5 A. I do.

6 Q. Is there any reason today that you
7 would not be able to testify truthfully?

8 A. No.

9 Q. What did you do, Mr. Stone, to
10 prepare for today's deposition?

11 A. Just in the last day or two or
12 since the beginning when I got involved in the
13 case?

14 Q. I would like to take it step by
15 step. But to the extent that you prepared for
16 today's deposition since being aware that you
17 would come in to be deposed, what do you do to
18 prepare for today?

19 A. So I read through my report, of
20 course. I read through some of the depositions
21 again. I read the investment policy statement
22 again. I looked at a few of the quarterly
23 reports, investment reports again. Probably a
24 few other documents as well that have been
25 supplied by counsel.

1 DONALD C. STONE

2 Q. When you say deposition
3 transcripts, do you mean the entirety of the
4 transcripts?

5 A. Well, I didn't look through the
6 entirety of all the transcripts again at this
7 point. But I did look up Laurie Latham in
8 particular, I reread that one.

9 Q. You read Laurie Latham's
10 deposition transcript?

11 A. I read her rebuttal report.

12 Q. When talking about deposition
13 transcripts, do you remember which deponents
14 the transcripts of which you read in preparation
15 for today's deposition?

16 A. There were a bunch of names,
17 that's for sure. There were several of the
18 committee members that I looked at. I didn't
19 read all of those transcripts in preparation in
20 the last couple of days. I looked at them
21 earlier. I think there were three committee
22 members that I looked at. One was the
23 associate legal counsel, one was the head of
24 the committee or at least presumed head of the
25 committee and the other would have been the

1 DONALD C. STONE

2 head of HR.

3 Q. Other than your counsel, did you
4 speak to anyone in preparation for today's
5 deposition?

6 A. No, I did not.

7 Q. Did you speak with counsel in
8 preparation for today's deposition?

9 A. I did.

10 Q. Who did you speak with?

11 A. John Roberts and a couple of his
12 associates yesterday for probably three, four
13 hours.

14 Q. Other than that conversation with
15 John and some associates yesterday, did you
16 speak with counsel in preparation for today's
17 deposition?

18 A. That was -- well, I think two days
19 ago I spoke with him briefly and yesterday and
20 that was the part that I would count as
21 preparation for today.

22 Q. You mentioned that you re-reviewed
23 Laurie Latham's report; is that right?

24 A. Correct.

25 Q. Did you review Laurie Latham's

1 DONALD C. STONE

2 report when she served it in this matter or
3 shortly thereafter or did you just review it
4 within this past week?

5 A. I think just in this past week.

6 Q. When were you provided the report?

7 A. It has been some time ago. I
8 don't remember the exact date.

9 Q. So you were provided it some time
10 ago and you read it this week for the first
11 time; is that right?

12 A. I think that is correct, yes.

13 Q. Have you read any other expert
14 reports that have been submitted in this
15 matter?

16 A. I have and it has been a little
17 while since I have looked at those.

18 Q. Do you know if those were
19 Plaintiffs' experts or Defendants' experts?

20 A. Those would have been Defendants.

21 Q. Are you aware if Plaintiffs have
22 submitted any other expert reports other than
23 your own in this matter?

24 A. I am.

25 Q. Do you know which experts or which

1 DONALD C. STONE

2 reports?

3 A. I did not read those. Since they
4 weren't part of my opinion I did not read them.

5 Q. Do you know who the experts are?

6 A. I don't remember the names off the
7 top of my head. And I don't know them through
8 my industry contacts.

9 Q. You said you recall reading
10 another of Defendants' expert reports other
11 than Laurie Latham; is that correct?

12 A. Yes.

13 Q. Do you know when you read that?

14 A. No, I don't.

15 Q. Do you have any documents with you
16 today in person, Mr. Stone?

17 A. I have a freshly printed out copy
18 of my report, that's it.

19 Q. Sounds good. So when were you
20 retained in this case?

21 A. I believe I want to say it was
22 either May or June of this year, I believe.
23 It's possible I was retained earlier, but we
24 didn't get around to looking at documents or
25 anything, so I don't have that -- I'd have to

1 DONALD C. STONE

2 look up when the agreement was signed. I don't
3 have that off the top of my head.

4 Q. That's okay. Do you recall --

5 A. Can I -- I'm sorry interrupt you.
6 I have a really obnoxious fly that keeps
7 landing on my computer. Can we go off the
8 record for two minutes and I'm gong to take of
9 this.

10 MS. ENGELMAN: Sure. Let's go off
11 the record for 5 to make sure that you take
12 care of it.

13 THE VIDEOGRAPHER: Counsel, the
14 time is 3:12 p.m. and we are off the
15 record.

16 (Recess Taken.)

17 THE VIDEOGRAPHER: The time is 3:14
18 p.m. and we are on the record.

19 BY MS. ENGELMAN:

20 Q. Mr. Stone, before the kind of fly
21 situation we were talking about when you were
22 retained in this case. Do you recall if you
23 reviewed any documents before you were retained
24 in this case?

25 A. I would have reviewed the

1 DONALD C. STONE

2 complaint prior to being retained.

3 Q. Anything else?

4 A. Probably that's the only document
5 prior to being retained.

6 Q. Did you have any conversations
7 with anyone in connection with prior to being
8 retained in this case?

9 A. Yes, I had I think a couple of
10 conversations with counsel prior to the
11 retention.

12 Q. With anyone else prior to the
13 retention?

14 A. No.

15 Q. Did anyone assist you in preparing
16 your report?

17 A. I worked with legal counsel, but
18 other than that, no.

19 Q. When you say legal counsel, you're
20 referring to Miller Shah?

21 A. Yes, I am.

22 Q. What particular attorneys are you
23 referring to?

24 A. Well, John in particular and both
25 of his associates.

DONALD C. STONE

Q. When you say you worked with legal counsel, did you actually draft every portion of your report?

A. I wrote the report. It's an iterative process. Counsel, as you probably are aware, that you have conversations at the beginning about kind of what the counsel's view of the case is. We go back and forth. We talk about particular salient areas where they have an opinion and they are wondering if my opinion kind of syncs up with theirs. We go back and forth on that. Sometimes it does and sometimes to doesn't. Then the process begins.

At that point they fed me a framework for the report itself and they also ended up filling in, of course, at the end putting all the cites and everything because they have this ability. I don't have that capability here.

Q. Of filling in the cites. Okay, so it is your testimony that you counsel provided you with a draft of the report and you --

A. We went back and forth creating drafts. They would have a, for lack of a

1 DONALD C. STONE

2 better work, a backbone of what they wanted to
3 do and I would populate it within some cases
4 depending on which section there was quite a
5 bit of information back and forth and they
6 would go and give me some additional
7 information. I would review that, I would edit
8 it, I would send them an edited version back,
9 back and forth. At the end of the day. It is
10 my report. I stand by the words on it. I
11 signed it. So I think that's the situation.

12 Q. Other than counsel at Miller Shah,
13 did anyone else assist you in any way in the
14 creation of the report?

15 A. No.

16 Q. To the best of your recollection,
17 when is it that you first received a, quote/unquote,
18 framework of the draft of the report from
19 counsel?

20 A. Probably in June.

21 Q. Do you have any recollection of
22 how many drafts you exchanged with counsel
23 before the report was finalized?

24 A. I don't remember the exact number.
25 All of these cases work in a very similar

1 DONALD C. STONE

2 fashion. Sometimes it goes with three or four
3 drafts, sometimes it goes up to six or seven
4 drafts. It varies and I can't give you an
5 exact number on this one. I have to go back
6 and recreate that.

7 Q. Sitting here today do you think it
8 was more than 3 or less than 3?

9 A. I would guess more.

10 Q. When you signed the report and we
11 will take a look at it, let me just pull up the
12 exact date here. July 31st of 2024, does that
13 ring a bell?

14 A. Yeah.

15 Q. Do you have a recollection of when
16 you actually finalized the report with counsel?

17 A. That would have been about that
18 time.

19 Q. So can you approximate for me
20 about how many hours you think you spent
21 preparing the report?

22 A. You know, I really don't know. I
23 submit monthly invoices, but I don't actually
24 total anything up on these cases until after
25 they are done. It's typical that it could be

1 DONALD C. STONE

2 cases -- it depends on case, but they could be up
3 to -- between 50 and 150 to 180 hours depending
4 and, I don't know, how many hours in this case.

5 Q. When you say 50 to 100 hours,
6 you're talking about the preparation of the
7 report itself and not necessarily including
8 preparation for deposition or are you
9 combining?

10 A. I'm talking about the total.

11 Q. When you were exchanging drafts
12 with Plaintiffs' counsel, were you also having
13 conversations about those drafts via phone or
14 Teams or Zoom or what have you?

15 A. Yes, typically via phone we would
16 have a conversation. I don't know that it was
17 every time, but there might be an e-mail
18 exchange going on, there might be phone
19 conversations, it just depended. But there
20 would always be some kind of communication back
21 and forth as these were being exchanged.

22 Q. Do you have any estimation or
23 approximate of how much time you spent on the
24 phone with counsel in the iterative process of
25 preparing your report?

1 DONALD C. STONE

2 A. I have no idea. I mean it would
3 be purely a guess. It is not something that I
4 track, so I could come up with a number but the
5 number would be as good as any fiction that is
6 out there. I just don't know.

7 Q. So you can't approximate whether
8 --

9 A. I don't want to speculate on
10 something that I can't even come close on.

11 Q. I don't want you speculate either.
12 Without speculation, can you say it was more
13 than 10 hours or less than 10 hours on the
14 phone with counsel in the process of creating
15 the report.

16 A. Creating the report, it would have
17 been probably less than -- probably approaching
18 10 in the creation of the report, somewhere in
19 that neighborhood. Again, that is a guess at
20 this point.

21 Q. Okay. So I understand that you
22 have served as an expert in prior cases; is
23 that correct?

24 A. That's correct.

25 Q. Approximately how many cases, I

1 DONALD C. STONE

2 know in your report you list the cases that you
3 served as an expert for the last four years and
4 we will cover those.

5 Do you have an approximation of
6 how many case you have served as an expert in
7 the last 10 years?

8 A. Let's see, the last ten years it
9 actually would be the same number. There was a
10 period of time between say 2004 and 2007 I
11 served as an expert and then I did not serve as
12 an expert again until 2021.

13 Q. Sorry, I missed the first date
14 that you provided there.

15 A. 2004 to 2007.

16 Q. From 2004 to 2021 you did not
17 provide any expert --

18 A. From 2007 to 2021.

19 Q. Understood. Did you provide
20 expert services prior to 2007?

21 A. Yes, between 2004 and 2007.

22 Q. All right, for some reason I had a
23 disconnect of the from 2004 to 2007 you
24 provided expert services?

25 A. That's correct.

1 DONALD C. STONE

2 Q. 2007 to 2021 you did not and
3 resumed again in 2021?

4 A. Correct. I can explain that.

5 Q. I was going to ask first how many
6 cases did you serve, if you can recall, as an
7 expert between 2004 and 2007?

8 A. Either four or five.

9 Q. Do you recall the issues on which
10 you opined in those cases?

11 A. I do.

12 Q. Can you just walk through the
13 names of the cases and the issues, if you
14 recall?

15 A. Well, I can give you the names of
16 two of the cases. There are a couple of them
17 which are -- I don't remember the names of the
18 cases, but they actually were the most
19 interesting of the group. They were a bit
20 different.

21 Two of the cases were -- one was
22 Kraft and my partner and I were working on that
23 case for the Defendants. And then General
24 Dynamics was the other one.

25 Q. Do you remember the issue that

1 DONALD C. STONE

2 was -- that you opined in Kraft?

3 A. It had to do with recordkeeping
4 fees and I believe in General Dynamics it had
5 to do with recordkeeping fees, but also had to
6 do with a -- with investments, because they had
7 in-house -- they had an in-house investment
8 firm that was spun off at a certain point, but
9 it was -- it had been a captive internal
10 organization, if you will, so there was some
11 issues obviously around a fiduciary aspect of
12 that.

13 Q. So for Kraft you said that you
14 were an expert for the Defendant; is that
15 correct?

16 A. Yes, that's correct. You actually
17 probably will see because I was -- I wrote a
18 big chunk of the report with my partner, which
19 you will see her name on it, Jennifer, at that
20 time it would have been Jennifer Marconi I
21 believe or it could have been Flodin, F-l-o-d-i-n,
22 which would have been her married name.

23 Q. When you say partner, what do you
24 mean by that?

25 A. She was my business partner in a

1 DONALD C. STONE

2 company that I founded in 2002.

3 Q. Were you opining on the prudence
4 of the fiduciary process in that case?

5 A. I believe, I think that is
6 probably a fair general broad explanation of
7 it. I don't remember all of issues and exactly
8 the details of it at this point. It has been
9 quite a while.

10 Q. For General Dynamics were you an
11 expert for the Plaintiffs or defense, if you
12 recall?

13 A. For the defense.

14 Q. The same question, were you
15 opining on the prudence of fiduciary process in
16 that case?

17 A. Yes.

18 Q. Then are those the only two cases
19 that you can recall providing an expert report
20 between 2004 and 2007?

21 A. No. There were two other cases
22 and they were -- they involved smaller plans
23 than the two that we just talked about. One
24 involved theft from a 401-K and the other one
25 involved a defense of a -- there was a lack of

DONALD C. STONE

fiduciary process until I was asked to -- if there was any reasonable defense in the case of a profit sharing plan where somebody -- an executive vice president of the firm had sued saying that there was imprudence because of lack of a fiduciary process and the investment selection monitoring.

Q. Do you recall what your opinion was in that case?

A. In the case of the, the last case that we just talked about, yeah, basically what I -- what we decided and legal counsel when they approached me, this would have been toward defense as well. They said there was no fiduciary process so we can't defend the case on that. Is there any other way that we can defend it and the answer that I came up with was how did the investments do.

Basically one person chose all the investments based on Money Magazine's recommendations each month and she knocked it out of the ballpark. We went to the judge and said no case, it would be a reasonable profit sharing plan to use 60 percent S&P 500, 40

1 DONALD C. STONE

2 percent of the Ag on the bond side. And if the
3 judge would accept that, which he did, then I
4 created, basically created a table showing the
5 performance.

6 So there was no -- basically the
7 defense was there was no harm no foul. Even
8 though there was no process, the guy who sued
9 was better off because of the selections that
10 she made.

11 Q. So your position in that case was
12 essentially that these investments performed
13 well and as a result the defense should succeed
14 irrespective of no fiduciary process; is that
15 correct?

16 A. Yeah, I didn't -- my report did
17 not say there was no fiduciary process. That
18 was counsel that took that position. My role
19 was to come up with the defense in terms of the --
20 was there a harm and the answer was there was
21 no harm. That was my narrow role to look at
22 that.

23 Q. And that was, just so I'm clear,
24 what is the name of that case?

25 A. I don't remember. It was a large --

1 DONALD C. STONE

2 it was -- I don't remember. I don't even
3 remember what the company did at this point.
4 It was kind of a mid-size firm in the greater
5 Chicago region. And besides that, I just don't
6 remember anything about it at this stage. That
7 was back in probably 2005.

8 Q. So any other cases that you
9 remember focusing on in the 2004 to 2007 time
10 period?

11 A. I mentioned there was one where
12 there was theft from a 401-K.

13 Q. Anything else?

14 A. No, those are the only ones that I
15 remember.

16 Q. From 2007 to 2021 you did not
17 provide any expert services; is that correct?

18 A. That's correct. We decided that
19 after the Kraft case we decided because of the
20 nature of these cases, they kind of come and go
21 and it's very difficult to run a business
22 despite the fact that, obviously legal firms do
23 it all the time, in terms of an investment
24 consulting firm, which my firm was, it created
25 more issues than it was worth going through to

1 DONALD C. STONE

2 try to staff for it and have the time and so on
3 to go through that kind of process.

4 So it was we just decided that we
5 wouldn't do any more cases and we didn't the
6 entire time that I was employed.

7 Q. Then in 2021 as of that time you
8 were retired from the consulting service
9 business; is that correct?

10 A. That's correct.

11 Q. So at that time you started to
12 pick up cases, am I right?

13 A. That's correct. I was approached
14 about a case, I believe that would have been
15 Astellas which has since been settled and that
16 is listed in the report. But I was approached
17 about that case in the fall of '21 to see
18 whether I would be interested in basically
19 working with the Plaintiffs in that case and I
20 think within about a month they also asked me
21 whether I would work on the Shell case.

22 Q. When you say they, who are you
23 referring.

24 A. This would have been Schlichter.

25 Q. Schlichter was Plaintiffs' counsel

1 DONALD C. STONE

2 in the Astellas and the Harmon versus Shell Oil
3 case; is that correct?

4 A. Yes.

5 Q. What was the issue in Astellas?

6 A. Astellas -- let me think for a
7 moment. So Astellas had to do with OCIO or
8 what is sometimes referred to as 338 services
9 that were being provided by Aon as a
10 proprietary product. That was the primary
11 issue involved in that case.

12 Q. What is it that you opined on
13 precisely?

14 A. Basically I was saying that that
15 was -- that their role in recommending their
16 own funds was conflicted.

17 Q. What was the issue in the Shell
18 Oil Company case?

19 A. Shell had several issues and that
20 is still an ongoing case at this point. One
21 was recordkeeping fees. The second was the
22 tier of investments of approximately 300
23 investment choices which were not monitored by
24 the investment committee. And then the third
25 issue was fees that were being generated by

1 DONALD C. STONE

2 managed accounts that -- and that tied into the
3 recordkeeping fee because it had to do with the
4 total revenue that was being received by the
5 record keeper at the end of the day.

6 Q. Did you opine on the fiduciary
7 process as it related to all three of those
8 particular issues or something else?

9 A. No, all three.

10 Q. But was your report limited to the
11 fiduciary process issue?

12 A. As oppose to -- well, I didn't --
13 so I dealt with the fee issues and the
14 fiduciary process issues. I did not opine --
15 if I remember correctly, I don't think I opined
16 on the -- I'm not sure exactly about the
17 prudence of any particular -- there were 300
18 investments that nobody was monitoring and I
19 did make some commentary about some of those
20 funds being duplicative and being the same fund
21 was in the main menu and outside of the main
22 fund it was a more expensive version. So I may
23 have opined about that. I don't think I was --
24 I don't think I opined about the returns of any
25 particular fund or any particular groups of

1 DONALD C. STONE

2 funds.

3 Q. We could introduce the exhibit,
4 but we will probably do it later. Do you have
5 your report in front of you, I'm looking at
6 paragraph 15, which just has a list here of the
7 cases that you set forth as providing expert
8 testimony. I'm just running through those.

9 I'm looking, Mr. Stone, at
10 paragraph 15 of your report, just to refresh
11 your recollection of the other cases in which
12 you listed that you provided expert testimony.
13 So we talked about Astellas. You listed that
14 as Wachala versus Astellas. Do you know, was
15 it actually Miller versus Astellas? Do you
16 have a recollection of that?

17 A. I don't have a recollection that
18 it was Miller, no.

19 Q. So then the next case listed is
20 Mills versus Molina Healthcare; is that right?

21 A. Yes.

22 Q. Did you provide testimony for
23 Plaintiffs or defense?

24 A. For Plaintiffs.

25 Q. Do you remember who counsel was?

DONALD C. STONE

A. That would have been Schlichter as well.

Q. What was the issue in that case?

A. That had to do with proprietary quasi custom target day funds.

Q. What is the issue that you opined on?

A. Well, that I felt that there was a conflict between -- well, that the advisor was offering their own funds as opposed to having an unconflicted view to go out and search for other funds for their client. And there were, even though the overall -- the issue ended up turning on whether in an NFP got -- if they received extra benefit because people went into their own funds. Which basically are a Wrap or Blackrock funds. And the answer is they got paid the same either way as a 338. But some of their staff actually got extra compensation because of the recommendation to go into those proprietary funds.

Q. Am I correct that you provided trial testimony in that case?

A. That is correct.

1 DONALD C. STONE

2 Q. Is that the only case in which you
3 provided trial testimony to date?

4 A. It is.

5 Q. Snyder versus UnitedHealth Group
6 is the next case listed. Did you provide an
7 expert opinion for the plaintiff or the
8 defense?

9 A. For the Plaintiffs.

10 Q. Who was counsel on that case?

11 A. I'm trying to remember who counsel
12 was and I could look it up, but off the top of
13 my head it is not coming to me.

14 Q. No problem.

15 A. It is going to be the same as
16 Natixis, if I remember correctly. No, I'm
17 sorry UnitedHealth is different. I'm getting
18 two law firms mixed up. So I don't remember
19 the law firm exactly, so I'm going to beg off
20 giving you the answer there unless you want me
21 to look it up.

22 Q. That's okay, no. Do you recall
23 the issue in that case?

24 A. I do. UnitedHealth, and this is
25 an ongoing case, UnitedHealth was utilizing

1 DONALD C. STONE

2 Wells Fargo's target date funds and had been
3 for many years. They were a -- they did a lot
4 of business with Wells Fargo. And the
5 contention by Plaintiffs was that the firm,
6 UnitedHealth, was conflicted and that they did
7 not act in participants' best interest in
8 choosing and retaining and not removing the
9 Wells Fargo funds.

10 Q. Did you provide an opinion about
11 the fiduciary process or was it just an issue
12 of conflict?

13 A. About fiduciary process because
14 they went through an RFP process and whatever.
15 I definitely opined on the process as well as
16 the conflict of interest.

17 Q. Did you make any conclusions about
18 the fiduciary process in that case?

19 A. I thought the fiduciary process
20 was flawed.

21 Q. Do you remember why?

22 A. I'm trying to think how much of
23 this is public at this particular point and how
24 much is privileged. So I'm having a little bit
25 of heartburn over that.

1 DONALD C. STONE

2 Q. We could move on.

3 A. Thank you.

4 Q. The next case is Waldner versus --
5 I don't know if I'm going to mess this up.

6 A. Natixis.

7 Q. Natixis. Do you recall if you
8 provided an expert opinion for Plaintiffs or
9 defense in that case?

10 A. For Plaintiffs.

11 Q. Do you remember who counsel was in
12 this case?

13 A. No. I don't keep all of these law
14 firms in my head.

15 Q. That's okay.

16 A. I'm supposed to be quasi retired.

17 Q. It seems like you have been busy.
18 So do you remember what the issue was in the
19 Waldner case?

20 A. Yes, Natixis is a very large
21 global investment management firm. Basically
22 Natixis is a, for lack of a better term, is in
23 parlance within the business world would be,
24 it's a roll up of investment managers. They
25 own a number of investment management firms

1 DONALD C. STONE

2 that operate under the original names, if you
3 will, when they were required.

4 Natixis put almost all, not
5 totally, almost all Natixis funds into their
6 401-K. So the issue had to do with fiduciary
7 process of the selection, monitoring and
8 retention of some of those funds, not all of
9 them, but some of those funds.

10 Q. Okay, again, were you providing an
11 opinion on the fiduciary process in the
12 selection, monitoring and retention of those
13 funds?

14 A. Yes.

15 Q. Were you deposed in this case?

16 A. I was deposed in that case, yes.

17 Q. And then --

18 A. That case is still open as well.

19 Q. Okay. The Williams versus
20 Centerra case on the next page of your report.
21 Did you provide an opinion for the Plaintiff or
22 the defense?

23 A. That would have been the
24 Plaintiffs.

25 Q. Do you recall who counsel was?

1 DONALD C. STONE

2 A. I do. In that case it was
3 Schlichter.

4 Q. What was the issue in that case to
5 the best of your recollection?

6 A. So the issue there had to do with,
7 again, target date funds.

8 Q. Do you remember what the
9 particular issue was around the target date
10 funds?

11 A. I'm not remembering the details of
12 it at the moment.

13 Q. Do you remember which target date
14 funds were at issue?

15 A. I believe it was the NFP Funds
16 again, if I remember correctly.

17 Q. NFP Funds?

18 A. Yes, that's not the name. The
19 funds themselves go under -- let me think a
20 second. I believe they use Life Path which is
21 similar to Blackrock. The names are similar to
22 what Blackrock uses for those. I might confuse
23 those two.

24 Q. Were you forming an opinion as to
25 the fiduciary process in retaining or selecting

1 DONALD C. STONE

2 or retaining and/or monitoring those funds or
3 something different?

4 A. I believe so, yes.

5 Q. Is that case still ongoing?

6 A. That one has been settled.

7 Q. Do you remember what your
8 opinion was in that case with respect to the
9 fiduciary process of selecting or changing the
10 target date funds?

11 A. I don't recall the details at the
12 moment. Sometimes these things start to become
13 a little bit of a blur.

14 Q. Understood. So the last one is
15 the Ahmed versus Liberty Mutual Group case.
16 Did you provide expert testimony for Plaintiff
17 or defense in this case?

18 A. For Plaintiffs.

19 Q. Do you remember who the counsel
20 was?

21 A. It was the same as -- let's see,
22 Liberty Mutual is the same as Natixis, I
23 believe it was the same counsel.

24 Q. Do you remember what the issue was
25 in that case?

1 DONALD C. STONE

2 A. Again, it was a target date issue
3 and I'm not remembering the details of it at
4 the moment.

5 Q. Do you remember what target date
6 funds were at issue in that case?

7 A. Let me think. I should remember
8 that. No, I'm just not remembering at the
9 moment.

10 Q. Do you remember if you provided an
11 opinion as to the fiduciary process with
12 respect to selecting and/or retaining the
13 target date funds at issue in that case or
14 something different?

15 A. No, I think it would be the
16 fiduciary process.

17 Q. So in any of these cases, do you
18 have a recollection that you worked with Miller
19 Shah?

20 A. I did not work with Miller Shah on
21 any of those cases, no.

22 Q. So how is it that you -- do you
23 know how it is that Miller Shah came to know
24 your name and contact you?

25 A. I believe they -- I think they

1 DONALD C. STONE

2 found me like some of the other found me which
3 is just on the internet. There is a lot out
4 there under my name and everything. Things
5 that I have written over the years. Some of
6 cases, obviously the information is out there.
7 So I think that is the way that -- I believe
8 that's the way -- in fact I'm sure that is way
9 they found me.

10 Q. So do you have any sense of how
11 much you've earned since 2021 in connection
12 where expert services?

13 A. Well, I don't know the exact
14 number. I don't necessarily want to get into
15 my total compensation, but certainly from the
16 cases that we have listed here, it's well north
17 of half a million dollars.

18 Q. Do you have any other source of
19 income other than providing expert services at
20 this time or since 2021?

21 A. Yeah, I do.

22 Q. I don't want to know the income
23 but what are the sources of income?

24 A. Well, at this point social
25 security. So mine and my wife's and I also

1 DONALD C. STONE

2 have a number of investment accounts. I have
3 also an IRA which is a rollover from a 401-K.
4 I have taken my required minimum distribution
5 every year. RMD. I have income off of bonds
6 and stocks and private equity investments as
7 well.

8 Q. You have been retired since, is it
9 2019; is that right?

10 A. It was actually May 19, 2019.

11 Q. So let's --

12 MS. ENGELMAN: Maria, can we mark
13 as Exhibit 1 Mr. Stone's report please.

14 (Exhibit 1 for identification,
15 Expert Report of Donald C. Stone.)

16 Q. Do you have access, Mr. Stone, to
17 Exhibit Share? Do you know how to work that?

18 A. I do have Exhibit Share. I'm
19 opening it as we speak. Can I go off the hard
20 copy of my report when we talk about my report?

21 Q. That is totally fine with me. I
22 just want it marked for the record.

23 MS. ENGELMAN: Let's mark it and
24 Mr. Stone and I will work off the hard copy
25 and proceed.

1 DONALD C. STONE

2 Q. Mr. Stone if you turn to the back
3 end of your report which is Exhibit B,
4 materials considered.

5 A. Yes, let me get to it.

6 Q. The first two pages are various
7 articles, but I want to turn your attention to
8 the litigation documents.

9 A. Okay.

10 Q. First of all, does this report
11 contain the totality of your opinion in this
12 case?

13 A. It does.

14 Q. The litigation documents that are
15 listed here, are these all of the documents
16 that you relied on in forming your opinion in
17 this case?

18 A. Yes.

19 Q. Did you personally review every
20 single document that is listed in Exhibit B
21 here?

22 A. I did.

23 Q. Did you review them in their
24 totality?

25 A. I would say virtually in their

DONALD C. STONE

totality. For example, when we talk about quarterly investment reports and they are 150, 200 pages long, I didn't review every single page, every single quarter. I think that is a fair assumption.

Q. Did counsel provide you documents to review in order to create your opinion?

A. Yes, they did.

Q. Did you request certain documents of counsel?

A. Yes, we had conversations, I don't recall specific requests that I made that they didn't provide. I know we had some back and forth. I had some questions and what have you, so that may have led to certain documents being included in the documents that they provided. But I don't recall off the top of my head.

As I said, it's a very iterative process. I had questions from the get-go and that's kind of the normal way these things work.

Q. So I guess what I'm trying to get at, the list on this page, is that all of the documents that you received in connection with

1 DONALD C. STONE

2 this litigation or is it a subset of what you
3 received and reviewed?

4 A. Well, first of all, the litigation
5 documents go on for several pages. I'm just
6 making sure that we are on the same thing.

7 Q. Yes.

8 A. So there is four pages here that
9 are not part of what I wrote and all of that
10 good stuff. Yes, this is to the best of my
11 recollection this is all of the documents that
12 I looked at.

13 Q. Did you type up these three pages
14 or did counsel?

15 A. They would have typed this up.

16 Q. Did you review it before it was
17 submitted to make sure it accurately reflected
18 the documents that you relied on in forming
19 your opinion?

20 A. I reviewed -- I always do a spot
21 check, okay, when there is -- when you have a
22 like a Bates number or whatever that somebody
23 put down, I spot check those. I don't go
24 through every single document and look at it
25 again. But I do spot checks to make sure it is

1 DONALD C. STONE

2 accurate, that I have seen it, that it is
3 something that I remember and I didn't find
4 anything unboard there.

5 Q. Do you recall if you requested
6 certain categories of documents to review in
7 connection with this case?

8 A. You know, again, that kind of goes
9 into the blur of the conversations that we had.
10 Obviously all categories that I wanted to see I
11 did see in this case and everything. So I saw -- I
12 mean the things that I would expect counsel to
13 provide, like IPS, quarterly investment
14 reports, those kind of normal documents I would
15 expect to see those there.

16 So I don't know -- I don't recall
17 something that it was like, okay, I haven't
18 seen this, I haven't seen that, can you provide
19 this particular document. But that would have
20 been part of that conversation that went on on
21 an ongoing basis.

22 Q. Understood. At the back end of
23 this, the last page is depositions of the
24 committee members as well as the consultant,
25 Rich Eagar, do you see that?

1 DONALD C. STONE

2 A. I do.

3 Q. We talked earlier about your
4 review of the transcripts in preparation for
5 the deposition. But in connection with
6 preparing your report, did you personally
7 review each of those deposition transcripts in
8 their entirety?

9 A. So I looked at all of them. I
10 can't say that I read every word -- it is fair
11 to say that I read all of them, but I sometimes
12 speed read through things where it is areas
13 that I don't think are as relevant to the issue
14 at hand. So sometimes some of the background
15 on somebody. I don't necessarily spend a lot
16 of time looking at every single job that each
17 person has had. I want to get to the kind of
18 meat of the issue.

19 I don't look -- I don't spend a
20 lot of time on the parts that you and I went
21 through a few minutes ago where you say if I
22 don't understand something I ask again. All of
23 the preliminary stuff that shows up in the
24 depositions and everything.

25 I try to go to the meat of what

1 DONALD C. STONE

2 I'm looking for in reading through all of
3 those.

4 Q. Are there any other areas, I mean
5 you said earlier that is not relevant to your
6 opinion. Any there other areas other than job
7 or background that you that you would have
8 support of sped read through?

9 A. Not that I recall, no.

10 Q. What do you consider the meat of
11 the issue?

12 A. I want to say how they talk about --
13 how they viewed their role on the committee.
14 How they thought about how decisions were made
15 by the committee. How they thought about the
16 advisor. What they thought about the fiduciary
17 training. Kind of all of the critical issues
18 that you would expect that each one of them
19 would have been asked about and would have had
20 a slightly different take on.

21 I want to see how they thought
22 about their role in the committee. How they
23 understood the decision-making process. Again,
24 what their comfort level was with investments.
25 There is a -- I come up with a very long

1 DONALD C. STONE

2 laundry list, but these are the kind of things
3 that you start immediately trying to go to to
4 understand as opposed to I went to college at
5 XYZ.

6 Q. Would you say that you read
7 these transcripts one time through in
8 preparation for your report or more than one?

9 A. I spent time going back on a
10 couple of them more than I did others. But so
11 I looked at Carolyn Campbell, I went back a
12 couple times to refresh myself on certain
13 things. I did the same thing on Jensen and
14 Riddle. Not so much on Rupp and Grindstaff.

15 Q. Why is that?

16 A. Because I didn't see anything
17 that -- I didn't see information that I felt
18 like I needed to go back and look at again.

19 I guess when I was looking through
20 my report and I was looking at the rebuttal
21 report, some of the information from those
22 particular people did not come up as much. Now
23 Rich Eagar, that is different, he came up a
24 lot. Of course he wasn't on the committee, he
25 was the advisor.

1 DONALD C. STONE

2 Q. We'll get to it, but there is a
3 fair number of transcripts or deposition cites
4 that are footnoted throughout your report; is
5 that correct?

6 A. Correct.

7 Q. Would you personally have chosen
8 which cites to include in your report?

9 A. I would kind of reverse that. It
10 was not me choosing the cite so much as the
11 reference point to quote. Because I didn't
12 know exactly what the cite was in some cases.
13 But I had information that is a footnote and so
14 the information that is the footnote, that
15 would be what I would be focused on as opposed
16 to coming up with the legal information that
17 goes with the cite.

18 Q. So okay, I guess maybe we are
19 talking about something -- maybe we are
20 miscommunicating here.

21 When I say citation I mean the
22 sort of information from the transcript, the
23 substantive information from the transcript.

24 Did you personally choose which
25 substantive information you wanted to include

1 DONALD C. STONE

2 from the transcripts for your report?

3 A. Yes, I mean I read through all of
4 this. Like I said, this was -- counsel might
5 bring up a particular topic or a particular --
6 what a particular individual said and we would
7 talk about it and sometimes it might be
8 something I would say that is kind of -- that
9 doesn't resonate, I don't know that that is
10 something that I find to be a problem or
11 whatever. Or maybe I would say okay, well that
12 sounds very relevant and everything, so let's
13 talk about that a little bit. It's a very
14 iterative process in that regard.

15 I didn't go through a transcript
16 and pick out six different quotes I want to
17 use, for example, from Kip Rupp, okay. I could
18 have done it that way because I read through it
19 and I did confirm all of those, but that is not
20 the way that these typically develop.

21 Q. What do you mean you did confirm
22 all of those?

23 A. I would go back and look up the
24 cites and make sure that they were correct. I
25 would look at footnotes and make sure they were

1 DONALD C. STONE

2 correct.

3 Q. You did do that for all the cites
4 prior to submitting your report?

5 A. Yes.

6 Q. Let's talk a little bit about your
7 background. So I kind of want to start a
8 little bit in reverse order. Prior to your
9 founding of Plan Sponsor Advisors in 2002,
10 prior to that, did you serve as a consultant in
11 any way to fiduciary committees in a 321 or 338
12 capacity?

13 A. I was on a committee, but I was
14 the head of the trust company, so I can't say
15 that I was a 321. I was running the trust
16 company.

17 Q. So when you say you were on a
18 committee, you were a member of a fiduciary
19 committee for a 401-K plan for the trust?

20 A. Yes, that's correct. For Key
21 Bank. Key Corp. would have been the holding
22 company.

23 Q. Did you have a specific role on
24 the committee?

25 A. Well, I ran the institutional

1 DONALD C. STONE

2 trust division.

3 Q. You just went out for me.

4 A. Can you hear me now.

5 MS. ENGELMAN: I'm not hearing you.

6 Can we go off the record.

7 THE VIDEOGRAPHER: Counsel, the
8 time is 4:04 p.m. and we are off the
9 record.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The time is 4:16
12 p.m. and we are on the record.

13 BY MS. ENGELMAN:

14 Q. Hi, Mr. Stone, sorry we had a
15 technical hiccup. I think before we went off
16 the record you were talking about the fact that
17 you served on a 401-K fiduciary committee at
18 Key Bank; is that right?

19 A. That is correct.

20 Q. Did you have a particular role on
21 that committee, Mr. Stone?

22 A. I don't recall if I -- I was not
23 the chair of that committee. So I don't recall
24 if I had a role other than being on the
25 committee.

1 DONALD C. STONE

2 Q. Do you remember how many people
3 were on that committee?

4 A. Not exactly, but I would say there
5 were probably five or six.

6 Q. Did that committee offer
7 investment options?

8 A. No, we were the ones who were --
9 that committee had the role of making options
10 available for the 401-K plan for key Corp. and
11 monitoring those and changing them out as
12 necessary. Some other -- we had some other
13 responsibilities in regard to the overall
14 institution.

15 Q. So you were responsible as a
16 fiduciary to make selections for investment
17 options; is that right?

18 A. Yeah, that was among the roles,
19 yes.

20 Q. The same for monitoring those
21 investment options that were selected?

22 A. Yes.

23 Q. Do you recall, did you consider
24 that to be a committee operating in a prudent
25 way?

1 DONALD C. STONE

2 A. Yeah, I thought it was a very
3 prudent committee. It was a very -- it was
4 laid out well. Everybody understood what their
5 role was. Everybody was educated about what we
6 were supposed to be doing when we were there.
7 I thought it was a good prudent committee.

8 Q. Was there an outside investment
9 consultant?

10 A. No.

11 Q. Do you know why that was the case?

12 A. Well, keep in mind this is in the
13 mid-1990s, that would have been less prevalent.
14 And we were a rather sizable money manager and
15 so it just was not -- it was not something that
16 I think was felt that was necessary at that
17 particular time.

18 Q. In terms of selecting investment
19 options, did that committee have any particular
20 process in place for the criteria it evaluated
21 when selecting investment options?

22 A. I don't remember the details at
23 this point. I mean, again, this is in the mid-1990s,
24 so a number of the options that were offered
25 were proprietary options, not all of them, but

1 DONALD C. STONE

2 a number of them were and that was very typical
3 at that time. I don't recall the details of
4 the process.

5 Q. Do you recall any details about
6 what criteria the committee considered when
7 monitoring the performance of those options?

8 A. No, not at this point.

9 Q. So aside from that role at Key
10 Bank prior to PSA, did you otherwise serve on
11 any other 401-K or 403-B fiduciary committees
12 or serve as an investment consultant in a 321
13 or 338 committee?

14 A. No.

15 Q. Looking to 2002, you say in
16 paragraph 9 of your report that you founded
17 Plan Sponsors Advisors, which we'll call PSA.
18 Was that with the partner that you mentioned
19 earlier?

20 A. Initially I did not have a
21 partner. So she became part of that
22 organization officially in some time in 2004.

23 Q. During the entirety of between
24 2002 and 2014 were you the president and
25 managing partner of PSA?

DONALD C. STONE

A. We changed titles a couple of times. I think I dropped the title of president at some point. At a certain point we went to founding member and that kind of thing. I don't recall the details at the moment.

Q. That firm provided consulting services to fiduciary committees; is that correct?

A. That's correct. I don't think it is actually in my CV there but there was a -- I also owned a second corporation that provided similar services and I will explain the reason behind that.

When I initially I had -- I picked up some clients and I had them operating under an entity called Third Coast Advisors. At the time that I brought my partner onboard she had a separate business that was high net worth individuals. We couldn't agree on a valuation between the two businesses, so we agreed to carve them out separately and leave them as independent as we built -- continued to build Plan Sponsor Advisors.

So that ran in parallel the

1 DONALD C. STONE

2 entirety time until I sold both of those
3 corporations to Pavilion in 2014.

4 Q. So just so I'm clear, was Third
5 Coast Advisors providing the services related
6 to high net worth individuals?

7 A. No, it was not high net worth
8 individuals. It was to 401-K plans as a 321
9 fiduciary.

10 Q. So can you just explain the
11 difference between the services that PSA was
12 providing and the services that Third Coast
13 Advisors was providing? I'm not sure that I'm
14 understanding the difference.

15 A. There was no difference in the
16 services provided. It had to do with the
17 ownership. So Third Coast I owned 100 percent
18 of, my partner had the high net worth business,
19 we were going to roll those into Plan Sponsor
20 Advisor but we couldn't agree upon on a
21 valuation for those businesses, so we decided
22 to carve them out, keep them separate.

23 So mine ran in parallel, Third
24 Coast ran in parallel. I didn't add any new
25 clients to that. It was kind of frozen at that

1 DONALD C. STONE

2 point with the existing clients it had. And it
3 ran until I sold that as well as Plan Sponsor
4 Advisors to Pavilion in 2014 and then her high
5 net business basically evaporated over time.

6 Q. You owned 100 percent of Third
7 Coast Advisors. Did you own a hundred percent
8 of PSA?

9 A. I did not own hundred percent PSA
10 at that point. There was a split that we had
11 and a complicated split, I don't want to go
12 into the legal aspect of that, but I was
13 majority owner.

14 Q. That's fine. So they were
15 essentially providing the same services to the
16 same clients or different clients?

17 A. Different clients.

18 Q. So let's start with PSA. For both
19 Third Coast and PSA were you providing both 321
20 and 338 services?

21 A. No, just 321.

22 Q. Just 321 for both, okay. During
23 the entirety of the time period between June,
24 2002 and June 2014 -- I'm sorry, between 2002
25 and 2014?

1 DONALD C. STONE

2 A. That's correct.

3 Q. How many, approximately, how many
4 clients did Plan Sponsor Advisors serve?

5 A. Probably over that timeframe,
6 around 60.

7 Q. What about Third Coast Advisors?

8 A. Third Coast was very small. I
9 think I had four clients in that.

10 Q. During the entirety of the 2002 to
11 2014 time period?

12 A. Yes, because they were all signed
13 up in 2002 and so I didn't add anything to that
14 entity. I just kept those clients all those
15 years.

16 Q. Did Plan Sponsor Advisors have
17 employees or independent contractors or
18 consultants that worked there?

19 A. We had employees. We sometimes
20 had independent contractors who did work for us
21 as well.

22 Q. How many employees or consultants
23 did Plan Sponsor Advisors have?

24 A. Obviously it varied over time. I
25 would say we were typically in the neighbor of

1 DONALD C. STONE

2 12 employees.

3 Q. Those employees were working as
4 321 advisors to clients of PSA?

5 A. Not all of them. Some of them
6 were in research. We had one administrative it
7 person. So there were several in the research
8 area exclusively. There were a couple who were
9 servicing clients and also in research. That
10 would have been 321s.

11 Q. What about for Third Coast, were
12 there any employees or individuals --

13 A. No, I was the sole employee.

14 Q. For Third Coast you personally
15 served as the 321 advisor to those clients?

16 A. Yes.

17 Q. Do you know the names of those
18 clients?

19 A. No, I don't remember them at this
20 point and they would be confidential.

21 Q. For PSA did you personally serve
22 in a 321 capacity to any clients?

23 A. I did.

24 Q. Approximately how many clients?

25 A. Well, I helped bring in all of

1 DONALD C. STONE

2 those clients -- probably almost all of those
3 clients. So I would have been in a 321
4 capacity for some period of time for probably
5 all of those. But what typically happened is
6 that after going through the process of
7 bringing -- onboarding the clients, at a
8 certain point obviously I couldn't service them
9 all, the same thing with my partner. So we
10 would hand them off to someone else once we
11 onboarded them and got them kind of settled in
12 to our reporting process.

13 Q. How is it that you went about
14 bringing in clients? What was that process?

15 A. Well, typically I would say for
16 Plan Sponsor Advisors it was almost totally
17 referral.

18 Q. Referral by whom?

19 A. Almost all by ERISA counsel. Not
20 totally, but almost all by ERISA counsel. And
21 sometimes there would be an RFP process
22 involved that counsel would say my client is
23 going to go through an RFP process and we would
24 like you to be in the mix.

25 Q. Do you recall for any of those RFP

1 DONALD C. STONE

2 processes, do you recall whether or not you
3 were submitting an RFP to be the kind of first
4 consultant to provide services to a plan or to
5 replace an existing consultant?

6 A. It could have been either one.

7 Q. Do you have any specific
8 recollection of whether or not you submitted an
9 RFP in connection with replacing an existing
10 consultant?

11 A. We did, yeah. I don't remember
12 who the existing consultant was or who the
13 client was. I mean that was not uncommon, I
14 guess is what I'm saying.

15 Q. With respect to the individuals
16 who worked under you or worked for PSA as a 321
17 consultant, do you feel those were prudent
18 advisors?

19 A. Yes.

20 Q. Did you oversee their work to
21 ensure they were fulfilling their obligation as
22 321 consultants?

23 A. Absolutely.

24 Q. You say in paragraph 9 that during
25 your tenure you advised on over \$65 billion in

1 DONALD C. STONE

2 retirement assets; is that right?

3 A. That's correct.

4 Q. Over what period are you talking
5 about there?

6 A. That is during the 2002/2014
7 period.

8 Q. In any given year do you know
9 approximately how many assets PSA provided
10 services for?

11 A. That's a very difficult question.
12 Are you asking on a retainer basis? That would
13 make this a little be easier. We had clients
14 who were project clients in some cases. That's
15 part of that 65 billion. And then of course we
16 had retainer clients who we provided ongoing
17 services to and were in that 321 capacity that
18 entire time.

19 Q. So on the project basis, those
20 were not -- those were specific projects, you
21 weren't the consistent 321 advisor to those
22 particular plans?

23 A. We might be 321 -- depending on
24 what the project was, we might or might not be
25 a fiduciary to that particular client.

1 DONALD C. STONE

2 So for ongoing retainer work when
3 we sold the business, we had a little over \$23
4 billion at that point.

5 Q. Do you know approximately how many
6 clients that covered?

7 A. That was about 50 clients.

8 Q. Do you know the range of the size
9 of clients that you provided 321 services to?
10 You said in your report both small and large?

11 A. Yes. So I would say at the time
12 that -- at the time that we sold the business
13 in 2014 the smallest client would have been
14 probably in the 5 million or so, 5, \$6 million
15 range. And that would have been one of the
16 kind, I will call them legacy clients. One of
17 our first clients. We had a very high
18 retention rate.

19 I think the average client size
20 was, and this is going to be a guesstimate, I
21 did calculate it at one point. But the average
22 client size was probably in the 4 to 500
23 million range and a number of the clients were
24 north of a billion.

25 Q. How many clients would you say

1 DONALD C. STONE

2 were north of a billion?

3 A. Probably of that 50, probably 10
4 of them. Probably another 20, 25 would have
5 been north of a 100 million.

6 Q. Would the asset size of the client
7 dictate the -- effect at all the quality of services that
8 you provided as a 321 consultant?

9 A. No. We looked to provide the same --
10 first of all, the same type of service and
11 there might be certain services that we didn't
12 provide to or would have actually -- I should
13 back up and say, would have provided as an
14 add-on service for certain clients because they
15 didn't necessarily need some of those service
16 or didn't need them all the time.

17 In terms of the normal, you know,
18 create the IPS, arise the IPS, provide
19 investment selection, monitoring, removal,
20 basically we did the same thing for every
21 client.

22 Q. For Third Coast Advisors, what was
23 the range of assets for those four plans, if
24 you recall?

25 A. I don't recall exactly, but they

DONALD C. STONE

were small. They would have been on the smaller end. So let's say 5 million or whatever. Because those were the first clients I brought in the door when I started in 2002 and those were -- two of those were within the first two months. They were not the typical client that we went after after that first year.

Q. Between 2002 and 2014 did your -- as a 321 advisor at PSA and I guess Third Coast, did your reporting capabilities change in terms of the sort of metrics that you can provide clients on their investments?

A. I don't think the -- the basic metrics did not change. We had a pretty robust reporting system early on that we invested in. So the -- and the metrics -- I'll make a distinction here because I think I understand where you're going.

The metrics that the industry reports on have been around now for a good 20, 30 years or so. And they are pretty much the same metrics. If you go to 50 different companies you're going to get largely the same

DONALD C. STONE

metrics.

What can be different is whether or not, and some companies use a scoring system and some of the scoring systems could get rather complicated. Some don't use a scoring system. So there is a -- I said that is where the big difference is.

Everybody is going to report on the returns of the fund. They are going to report on the risk adjusted returns of the funds, the expense ratios, the Sharpe ratio, the upside/downside capture, so on and so forth. There is a whole range of things that come into being well after ERISA, but that are used by everybody to try to evaluate investments these days. And that is pretty standardized.

Q. Is it your view that it is appropriate for committees to evaluate all of those metrics that are recorded in their fiduciary capacity?

A. You know, I guess the keyword is all. I think there are metrics that are looked at by consultants that are probably not well

DONALD C. STONE

understood by many clients. And you don't show every metric that you could possibly look at in a report. I mean it gets to be very, very cluttered.

So I would say typically you look at the more salient ones that are going to -- that are used in your report. Some people prefer the Information Ratio versus the Sharpe ratio, some people the Sharpe ratio versus the Information Ratio.

There are other ratios, the Sortino ratio that is not used very much. But it is all out there and all available on the same -- there are about three investment platforms that exist out there that gather all of this data that everybody uses to report on.

Q. So I want to break down a couple of things that you said. The metrics that you think committees would not understand, what are those?

A. There are metrics, probably that's not the right word. They might not be familiar with them. The Sortino ratio is one that I can't remember how it is calculated at the

DONALD C. STONE

moment. But there are a number of metrics around the whole risk adjusted topic. And generally the Information Ratio and the Sharpe ratio are the two that are most commonly used by basically everybody in the industry that I know of. So those tell a very similar story and everything.

I don't think -- I guess what I'm saying is, there are a lot of other things that if you're a CFA you will be aware of 20 different ratios that aren't necessarily in anybody's reporting, and if they would be, I'm not sure why they would be because they don't add necessarily a lot of additional value.

Q. In terms of your view as to what should be presented to a committee for its review in terms of performance, what metrics do you believe should be presented or did you present to the committee in which you served as a 321 advisor?

A. I'm probably not going to remember every single thing that we -- and we're talking quantitative at the moment. We will probably get into qualitative as well.

1 DONALD C. STONE

2 But the quantitative metrics, the
3 kind of things that we would report on on a
4 quarterly basis would be obviously raw
5 performance, performance against a benchmark,
6 perhaps against a couple of benchmarks
7 depending on the asset class, depending on
8 primarily the asset class and whatever we, you
9 know, whatever the investment manager used as
10 their preferred benchmark would show that. We
11 would also use a best fit benchmark which might
12 be the same thing, might be something
13 different.

14 We would do calculation of the
15 risk adjusted returns and we would use both
16 sharp and Information Ratio for that. We would
17 report on actual assets in the product, in the
18 investment product. We would report on the
19 tenure of the manager or managers. We would
20 report typically on the upside/downside
21 capture. It would be R squared, expense ratio
22 reports.

23 THE COURT REPORTER: Hold on a
24 second, he froze.

25 THE VIDEOGRAPHER: He froze. Let's

1 DONALD C. STONE

2 go off. The time is 4:41 and we are off
3 the record.

4 (Recess Taken.)

5 THE VIDEOGRAPHER: The time is 4:45
6 p.m. and we are on the record.

7 MS. ENGELMAN: Bill can I call on
8 you to say the last thing that you got of
9 Mr. Stone's testimony.

10 (Requested portion of record read.)

11 BY MS. ENGELMAN:

12 Q. Mr. Stone, you were talking about
13 the metrics that you would report on as a 321
14 advisor for clients. Is there anything else?

15 A. I'm sure there are a number of --
16 there are few other metrics, those are probably
17 the most salient ones that would, I think, be
18 of interest to clients or committees on a
19 quarterly basis.

20 There would be for -- obviously
21 when we're reporting on target date funds we
22 get into some other additional things that we
23 would report on periodically if certain things
24 changed or what have you. But you know that --
25 maybe I didn't -- one thing that I may not have

1 DONALD C. STONE

2 captured is we would capture comparison to
3 peers. I don't believe I said that one and
4 that is a very important one.

5 Those are the principal ones that
6 are coming to mind at the moment.

7 Q. You said with respect -- I didn't
8 mean to interrupt you. Were you done?

9 A. I was done, thank you.

10 Q. With respect to target date funds,
11 you said there were some other metrics. What
12 would those be?

13 A. In target date they are obviously
14 going to look at the glide path, you're going
15 to look at any changes in the glide path over
16 time. You're going to look at changes in the
17 asset make up of what makes up the target date
18 funds. In other words the basic -- obviously
19 you have the glide path, quote/unquote, but
20 what makes that up in terms of the asset
21 allocation might change over time. So that is
22 not the thing that we would report on every
23 quarter. It is one of those things that comes
24 up as necessary.

25 Q. Anything else with respect to

DONALD C. STONE

target date funds?

A. Nothing that I'm remembering off the top of my head right now.

Q. I think you said that you would periodically provide additional information about target date funds to your client. Did I hear that correctly?

A. Yes, something that we did and obviously was done in this case and very typical in the industry is to periodically do a comparison or what some people call a deep dive to compare to various metrics against other target date series that are out there as part of the ongoing education of client committees.

Q. What metrics would typically be in the presentations that you would provide to your clients?

A. Well what you'd be looking at, and this was not specific to a client, it was for all clients. You would provide information on assets, the asset -- maybe on the asset flows both in and out, you would provide information on the comparisons of the glide path, comparisons of returns, comparisons of expense

DONALD C. STONE

ratios. You would look at things like comparison of whether there are to or through. And I think most importantly you'd look at their -- for this part you would look at what is their equity mix at retirement date. Assumed retirement date of 65. I do would look at -- you know, you just look at a number -- provide all of that information probably -- again, I'm not going to remember it all off the top of my head.

You're basically looking to provide a grounding for the committee on a comparison of various products that are out there which might lead to a conversation as to whether a further evaluation of the existing product was wanted or not.

Q. How often would you provide these types of reports to your clients?

A. Typically annually.

Q. Is there any client that you can think of that offered a target date fund that you did not provide this to at least annually?

A. I can't think of one or a reason why I wouldn't do that.

1 DONALD C. STONE

2 Q. What was the purpose of providing
3 these to your clients annually?

4 A. Well, again, typically for most
5 clients the target date funds over a period of
6 time became the -- because they were typically
7 the QDIA, they would become the largest asset
8 within the plan. So I think additional scrutiny
9 was certainly warranted. And again, that was
10 part of the general education of the committee
11 that we would provide on an ongoing basis.

12 On a quarterly basis you wouldn't
13 provide what I just said because nothing would
14 change on a quarterly basis. It wouldn't make
15 a lot of sense to do that.

16 Obviously if there was a selection
17 of a target date, then there would be additional
18 elements that you would look at that would be
19 specific to that particular plan in looking at
20 making -- in choosing a target date fund. And
21 sometimes you would go back and rerun that
22 information specific to that plan on a periodic
23 basis. Not necessarily annually, but from time
24 to time as appropriate.

25 Q. I want to unpack just a few things

1 DONALD C. STONE

2 that said. You went through the quantitative
3 criteria, generally speaking, that you would
4 provide to your client on a quarterly basis; is
5 that right?

6 A. Yes.

7 Q. And is it that you provided that
8 information so that the committee would review
9 and consider all of that information in making
10 its decision with respect to the investment
11 options offered in the plan?

12 A. Yes.

13 MR. ROBERTS: Objection to the
14 form.

15 Q. Is it your experience that the
16 committee in which you served as a 321
17 consultant actually considered those metrics in
18 making decisions with respect to the investment
19 options offered in the plan?

20 MR. ROBERTS: Objection to the form.

21 A. Yeah, they did do that because we
22 spent a lot of time educating them about the
23 purpose of each of those and obviously some of
24 them were kind of self-explanatory. But a
25 number of them were things that a typical

DONALD C. STONE

person that comes on to a committee may or may not be familiar with. We would spend time as part of that fiduciary education process educating them about the various economic terms and economic metrics and educating them about the context of what was going on in the world as their investments, what was going on with them and what was going on in the world that might be having an impact on them.

So the key was to get an educated group that could actually be conversant. I think there is real concern in the industry in terms of people throw all of these metrics out and come in with fancy reports that got an awful lot of night colors and everything and my experience is, unless you really work hard at it, half the people on these committees don't have a clue as to what you're talking about.

So it is very, very important, because they don't have the background in investments, so you really need to educate them, otherwise you're showing them a lot of pretty charts and saying you should do this and do that. And it is difficult for them to

1 DONALD C. STONE

2 deliberate about that.

3 We spent a lot time on that
4 education process and it's a never ending kind
5 of process, but it is really critical to good
6 decision-making by a committee.

7 Q. It is critical and you spent the
8 time educating your committees on these various
9 metrics that you mentioned, the quantitative
10 metrics, because it was your expectation that
11 they considered each of them?

12 A. They did need to consider each of
13 them, absolutely, and to be able to be
14 conversant in them and ask questions about
15 them. There would be sometimes very lively
16 conversations that would go on with these
17 clients and everything because they did take it
18 seriously.

19 Q. With respect to the target date
20 annual reports that you provided, you mentioned
21 that you provided those to all of your clients
22 that offer target date funds; is that right?

23 A. Yes.

24 Q. Would you tailor those reports to
25 any specific plan?

1 DONALD C. STONE

2 A. No, as I mentioned, there was a
3 standardized report that all of them received.
4 The only thing that was tailored to them,
5 obviously it covered -- made sure that it
6 covered the target date fund that they offered
7 and a range of other target date funds that
8 were out there. So typically it would be the
9 same report that would go to all clients.

10 There were things that were
11 customized to a particular client relative to
12 the target date that I alluded to that were
13 critical to the selection process. And would
14 be important to the monitoring process if there
15 were in fact questions about whether the fund
16 that they had, the target date series they had
17 was the appropriate one. But that is not
18 something that you would run all the time.

19 Q. That's helpful, thank you.

20 So you said you mentioned the
21 selection of a target date fund and some
22 metrics that would be important to that
23 process; is that right?

24 A. Absolutely, yes.

25 Q. So in your view what are the

1 DONALD C. STONE

2 important aspect of a committee's selection of
3 a target date fund?

4 A. Well, I think what is critical in
5 the selection of a target date fund is you're
6 going to talk about the objectives that the
7 committee has, what their expectations are for
8 that target date fund. You're going to spend
9 time talking about any particular philosophy or
10 opinions that the committee already has formed
11 and has as you go into that process to
12 understand where they are coming from. And
13 those could sometimes bring up issues that you
14 want to address in that selection process.

15 You're also going to look at plan
16 demographics or what some people refer to as a
17 fit analysis. The plan demographics are
18 critical to the selection process.

19 Q. Why is that?

20 A. Well, because there is not one
21 target date series that is the choice for
22 everybody out there. Plans have, as I referred
23 to a moment ago, sometimes they may have
24 different objectives or different philosophies,
25 but most critically all plans have different

1 DONALD C. STONE

2 demographic information and the success or
3 failure of a particular target date series
4 really rests on those particular elements of
5 that plan.

6 So what may work very well
7 and be the right choice for plan A may not be
8 the right choice for plan B and could in fact
9 be imprudent. So it is not just a, let's go
10 out and find a well known target date series or
11 whatever. There are really critical elements
12 to look at. I will give you an example.

13 Things you want to look at are
14 average balances, average age of participants,
15 you want to look at the contribution rates of
16 participants, you want to look at the contribution
17 rates of the company, you want to look at are
18 there supplemental plans. There are a handful
19 of those -- those are some of most important.
20 There are others. I'm not going to try to list
21 every demographic element at the moment.

22 All of those go into play because
23 what you then want to do is to make a selection
24 is to project out what is the probability of
25 this particular -- of any particular target

DONALD C. STONE

date series working for that plan. By working, I would say getting the largest percentage of participants to a successful retirement.

In the industry, generally speaking, there is general agreement that somewhere between 80, roughly 80 percent, some people are a little less than that and some people a little bit more than that, but let's say 80 percent is probably the vast majority would agree is the income percentage that you're looking to replace through the plan, through other assets somebody may have and through social security.

So what ends up happening is the average participants, you're probably talking about somewhere between in the neighborhood of 40 to 50 percent has to come from the 401-K plan. You project that out using Monte Carlo simulations.

I would say certainly I'm sure the top 100, 150 consultants out there and maybe more have this capability to project that out and say, okay, this is what it is going to look like in all likelihood, because you run

DONALD C. STONE

thousands of simulations and you have an idea of whether or not it is going to get somebody across the finish line.

What you find sometimes is that a target date series which might be well designed, good named investment company but for this particular plan doesn't work because people aren't saving enough, people don't have average balances big enough, they can't get there, they are going to fail. The whole plan will fail if they choose that target date series so you don't want to do that.

For another plan it might be a very valid and reasonable choice. So it takes a lot of -- I think it takes a lot of work to in a really prudent way to make these choices. And then this has developed over a period of the last 50 years. I mean we are literally 50 years away from ERISA coming into play.

All the things that we have been talking about, almost none of them existed when ERISA was founded. In fact ERISA assumed everybody would be in a defined benefit plan for the most part.

1 DONALD C. STONE

2 Q. I hear you. I just know we just
3 celebrated the 50th anniversary. We had some
4 parties here at our firm to commemorate that.

5 A. That's okay, yes.

6 Q. So a couple of follow up questions
7 there. What you just walked through in terms
8 of the things that a committee in a prudent way
9 would consider in selecting a target date fund,
10 would those considerations come into play when
11 monitoring the prudence of a selected target
12 date fund in terms of retaining it for the
13 plan?

14 A. Yeah, it's not something that you
15 would report on quarterly because you're not
16 going to rerun what I just described, the Monte
17 Carlo simulation, you're not going to rerun
18 that quarterly.

19 If something were under
20 consideration for -- let's say it was on a
21 watch list, I will use that is a broad general
22 term because I know in this particular case
23 they used several different terms, and if you
24 go look at 20 plans they may use a couple of
25 different terms for that. But in general

DONALD C. STONE

something that needs more scrutiny, we call that a watch list. Then you might go back and rerun this at that point and say is this thing working the way it is supposed to. Is there something that has changed in its composition that requires more scrutiny.

I think you take a much deeper, I will use the term deep dive, but in this case it is very specific to the target date series that you have to figure out what is going on with it and how is it working with that plan.

You're going visit with the manager, you're going to spend time with them and you're going to look at -- you're going to spend a lot of time looking at their operational processes, you're going to look at their -- some of the qualitative things that we haven't talked about and everything.

I guess the point is, you might rerun that type of information at that point when you've gotten to a stage where you're considering making a change. You may or may not ultimately make that change, but when you're on watch, then that to me is you have

DONALD C. STONE

heightened scrutiny. It is not just saying, watch and walking away from it. You actually need to do some additional work to look at it.

I would expect a committee to be saying to their consultant or their advisor, we need you to go back and come back to us with what is going on with this thing. Why, you know, great it's underperforming, but why is it underperforming. What is actually going on under the covers that is making this happen. And it may turn out that, well, you know, it's a blip, it may turn out that there are reasons because of changes in the firm, there may be reasons that that particular approach is out of favor.

There certainly can be explanations and then the committee has to be thoughtful to consider, you know, are we still comfortable whether those explanations are satisfactory or perhaps we need to consider making a change. Again, just because it goes on watch doesn't mean you change it, but it certainly does mean that you give it additional scrutiny.

1 DONALD C. STONE

2 Q. So there would be circumstances in
3 your experience where there is underperformance
4 of a fund, but it is still appropriate to continue to
5 offer that fund in the planned?

6 A. Yes, as long as you continue to do
7 the additional scrutiny while it is under watch
8 and then if the committee gets comfortable with
9 that, that's obviously a choice, that is part
10 of what they are supposed to do is make a
11 choice as to whether they think it is
12 appropriate or not.

13 Q. You mentioned the Monte Carlo
14 simulation; is that right?

15 A. Yes.

16 Q. I'm not familiar with what that
17 is. Can you explain what that is?

18 A. Yes. In a simple way, because I
19 haven't run these in a while, so Monte Carlo
20 simulations basically are -- and you see this
21 -- I mean for example, when you look at --
22 maybe the easiest thing to think about is, we
23 are in hurricane season and when you go out
24 there and you got a hurricane coming towards
25 Florida and they show you the cone of

DONALD C. STONE

uncertainty as they call it, which shows all the possible routes that hurricane can take. They've run thousands of simulations to create that cone of uncertainty or whatever as to where it is going to go. All the inputs that go in.

So in the case of Monte Carlo simulation for a target date fund, you're going to think about all the different possible permutations. You're not going to think about it, you're going to have the system run it, that could happen.

For example, you have immediately you start having bad returns and you have bad returns for five years in a row, or you immediately have incredibly good returns or it's level returns over the entire 35, 40 year period, the career of a person.

So the mathematics are running all of those different kind of permutations of what might -- what those returns might look like. And literally -- we would typically run I think at 10,000 we figured out that we had all we needed. And what happens you begin to see --

DONALD C. STONE

then you start to kind of -- for purposes of looking at the, what we were talking about, about who is going to get across the finish line, you look then at kind of the median of all of those. You wouldn't take the outliers, whether they are positive or negative, you're going to look towards the median of that.

So that's probably the most likely outcome that you're going to see. And how does that work if we said that a particular participant -- and we will just break it down as a participant. A particular participant needed \$1,500,000 at retirement to meet this 80 percent goal including social security, does this simulation do that, okay. If it comes up and says well, no, the most likely case is they're going to be at 1 million 3, that is not very good. If it says they're going to be at 1 million 6, we are kind of happy about that.

There may be three or four or five target date series that are successful that way for the largest number of participants. So then you have to do -- then you start doing additional analysis to figure out which might

1 DONALD C. STONE

2 be the right choice for that entity. You're
3 going to look at how smooth the ride is. How
4 comfortable the ups and down that go on along
5 way.

6 I'm not how much more detail you
7 want on that. But that's kind of how you do
8 that. It's a mathematical simulation that
9 projects out what possible returns could be and
10 the sequence of those returns over a broad
11 number of years.

12 Q. So I want to make sure I'm clear
13 and I don't want to get into the total minutia
14 of this. But you're essentially suggesting
15 there is a program where you would input the
16 demographic fits or objectives of your plan for
17 which you're solving for?

18 A. Yes.

19 Q. And attempt to create over the
20 long-term, so for the average retiree a certain
21 level of returns and the system would look at
22 all target date funds in the market or is it a
23 subset?

24 A. It is not looking at target date
25 funds. It's looking at returns at that point.

DONALD C. STONE

So what you plug in -- let's say we have participant Bob, okay. So Bob is currently deferring -- I'm just using an individual -- but you use averages obviously. You could run it for every participant. You could make it -- you can individualize it for everybody but then that could get incredibly expensive.

So would you typically do is you run it for the plan which means you look at the average deferral rate, you look at average contribution by the company, you look at average balance and so on and so forth or you look at the median or you run it for both of those.

So let's say that the average participant is contributing 6 percent and the average participant has a balance of the \$90,000. The average participant is, let's say it's a company that has a fairly old workforce that the average participant is 20 years from retirement. You plug that in and then you plug those numbers in and so you have that \$90,000 balance and you're now going to run that out with that 6 percent contribution rate and

DONALD C. STONE

you're probably going to look at other things like does the plan have other escalations.

So is Bob going to be or the average participant, are they going to be putting in 7 percent the next year and 8 percent the year after. So you can build that in as well.

Then given those numbers, then you run the simulation with returns for a mix. So you can run that mix against a particular asset allocation which let's say would be the T. Rowe Price Funds or it could be the Fidelity or it could be Van Guard, it could be whatever. And you run those for each one of those against their allocation because their allocation is going to have, depending on how conservative -- you're going to run those for each allocation against those average balances and the way those balances are going to grow and everything over time.

That is how you get at the end analysis that at 65 the probability is that this person will have a balance of X. This average participant or median participant

1 DONALD C. STONE

2 depending on how you run it.

3 Q. How is it -- --

4 A. That is very common. It is run by
5 all of the different advisors in consulting
6 firms that I used to work with and interact
7 with and over time and everything. It is not
8 an unusual program. This has been around for a
9 long time.

10 Q. Is it something that you used as a
11 consultant?

12 A. We used it for every single client
13 for a target date fund. That is how the selection --
14 that was a big part of the selection process
15 because we might come up with three choices.
16 There is 42 different -- as of I think as of
17 last year there were 42 different target date
18 series, not counting any custom things that are
19 out there that are available in the marketplace.
20 Some have gone out of business over the years
21 others have come into the business in the last few
22 years, there is around 42 of them out there.

23 The only way that you're going to narrow
24 this down is to tie that from a prudence
25 perspective, is this going to make sense for our

1 DONALD C. STONE

2 client. The real basic level is this is why you
3 want diversification in the first place and so on
4 and so forth.

5 If we go back to what the Department Of
6 Labor has said, you're supposed to have at least
7 three asset classes, well, everybody has a lot
8 more than that. Everything is based off of
9 building on that. So it is available to most of
10 the firms out there that I'm aware of and has been
11 for a long time.

12 Q. So how is it that -- one piece
13 that I think I'm struggling to understand, how
14 is it that you decide as a consultant or as the
15 common industry decide which target date funds
16 to run in the program? You said you could, for
17 example, use T. Rowe Price. How would you
18 whittle it down from 42 to however many you're
19 going to run in the program?

20 A. We typically -- we wouldn't run 42
21 different runs probably. Most firms don't
22 actually track all 42 or whatever the number
23 happens to be today. But there is a large
24 subset that they probably are watching.

25 So certainly if it is on your --

1 DONALD C. STONE

2 if you have a buy list or a recommended list or
3 preferred list of managers, because those are
4 the ones that you have the highest conviction
5 in, you'd run it against all of those and there
6 might be five, six different managers. But you
7 probably have run it internally against a much
8 larger subset over time to determine is this
9 somebody that we should be looking at for our
10 clients that we should be considering.

11 We would've run it against
12 probably 20 different products that were out
13 there as a part of our process. Not for a
14 particular client, but for the firm in order to
15 be able to recommend things to our clients.

16 Q. Okay, but if you're looking at a
17 particular client and they are looking to make
18 a target date fund selection, you mentioned a
19 preferred list. What is that?

20 A. So every -- I won't say every.
21 The vast majority of investment consultants
22 have a buy list or whatever they call it,
23 whether it's a buy list or preferred list or a
24 high conviction list or whatever, but it's a
25 group of -- you had your investment team

1 DONALD C. STONE

2 analyzing -- going out and looking at managers
3 all the time. This is true of every asset
4 class.

5 So you go out and you say, okay,
6 these are the five managers, there is 600 large
7 value managers, but out of that we really have
8 a high conviction because we have been to see
9 them in their office, we've seen their operational
10 processes, we've looked at their stability of
11 the organization and we've looked at their
12 returns, the construction methodology, we
13 looked at -- it goes on and on. And we have a
14 really high conviction of this manager and this
15 manager and this manager.

16 You typically might have five
17 different target date managers that you have a
18 high conviction and five or six large growth
19 managers or large value or whatever and in all
20 the asset classes you would do that. That is
21 very typical. Those would be the ones that you
22 would start with certainly on the target date.

23 Now, if none of those, I can't
24 imagine, but if none of those worked out, you
25 could go on and look at others as well. But

1 DONALD C. STONE

2 you've already whittled it down to some extent
3 because these were ones that you have -- you've
4 seen what they have done, you have a lot of
5 history on them and we have a lot of history at
6 this point for target date.

7 And these are the ones that you --
8 somebody said through -- if your grandmother
9 said what should I buy, this is one of ones
10 that you would recommend to your grandmother
11 because you're comfortable with it for any of a
12 number of reasons which you would articulate in
13 the internal notes that you keep on fund
14 managers.

15 Q. At your time at PSA and Pavilion,
16 I'm going assume that your testimony here
17 relates to your capacity as an investment
18 advisor at Pavilion as well, which I know that
19 we haven't talk about yet. Is that generally
20 fair?

21 A. That's fair, yes.

22 Q. Can you name the target date funds
23 that you had a highest conviction rate with?

24 A. Yeah, the highest conviction
25 managers might have changed a little bit over

1 DONALD C. STONE

2 time, because we're talking about a number of
3 years, but the highest -- in general the
4 highest conviction managers would have been T.
5 Rowe Price as an active manager, JP Morgan as
6 an active manager, but also as a blend manager
7 which is to say they use some passive, some
8 active. Blackrock as a passive manager. Van
9 Guard as a passive manager. State Street as a
10 passive manager. And then American Funds as an
11 active manager.

12 Those would have been probably
13 been the recurring -- the ones that would have
14 recurred most often.

15 Q. Did you ever have a conviction
16 rate with the Fidelity Freedom Funds to your
17 recollection?

18 A. We used the Freedom Funds -- we
19 used Fidelity -- I don't know about the -- Fidelity has
20 several different versions. So I don't recall
21 that the Fidelity funds -- Freedom Funds were
22 on our high conviction list.

23 We did have some clients at some
24 point in time and I'm thinking this was
25 actually way prior to the class period that we

DONALD C. STONE

are talking about who did use the Freedom Funds, but I believe those clients moved out of those, the Freedom Funds, at some point and probably this would have been 2008, 2010 period. But that's very hazy in my mind. So that is just a general.

Q. No problem. So just a couple of other things on this simulation exercise.

Once you ran the exercise and you whittled it down to from maybe six target date funds and then a handful of those would work, quote/unquote, work for your clients. Then what are the other factors that you would consider as a consultant in providing advice as to which to select?

A. So let's say that three of the funds all passed those screens that you just mentioned. As I mentioned a couple minutes ago, one of the things that we look at next is, okay, if all three of these get across the finish line, so to speak, which one is probably going to be the most comfortable ride for participants. Which is to say going to have the least volatility over that period of time.

1 DONALD C. STONE

2 So one fund might be just really
3 fabulous, it knocks the lights out ultimately,
4 but the ride was like being on a roller coaster
5 all the time, that is probably not the one that
6 you are going to recommend. You're going to
7 look for something -- if there are three of
8 them that past those screens, you're going to
9 look for something less volatile.

10 All things being equal, one that's
11 less volatile would be one that you'd probably
12 recommend to the client as opposed to a more
13 volatile choice.

14 Q. Any other factors that you would
15 consider at that point in time?

16 A. Well, you're going to look at
17 things like when do people -- at that point you
18 may look at the to versus through idea which is
19 if I went to a client and they said, like most
20 clients would, well, most of our participants
21 take their money out within one year of
22 retirement. Then it doesn't matter which one
23 you choose because the to or the through are
24 both going to be fine because people are going
25 to take their money out right after the

DONALD C. STONE

retirement.

If somebody said our participants they really trust us, they are likely to keep their money in the plan and we would like them to keep their money in the plan because we think they get the fiduciary oversight, they get better pricing blah, blah, blah. Then in that instance maybe one of the decision factors would be of these three is one of those a through choice as opposed to to.

So it's a conversation with the committee they will all work for you, but let's find something that seems to be the best choice, all things being equal. Those are -- there are probably some other factors, but those are the big ones.

Q. When you talk about volatility, just help me understand. What factors would be driving volatility or what you would be looking at to determine the volatility of a certain fund?

A. Well, keep in mind we projected out the returns based on all the factors that we talked about, and then when -- you're going

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2 to have a lot of lines on a graph, if you can
3 picture it, sometimes those lines are going to
4 be smoother for some target date series then
5 for others, which means they have fewer ups and
6 downs in the market. Maybe they do a little
7 better job of protecting on the downside when
8 the market isn't -- as a bear market or a down
9 market even if doesn't go to a full bear
10 market.

11 Others are going to be we are
12 pedal to the metal and we are going to generate
13 great returns, but when the market goes down we
14 are just going to get hammered at least for a
15 period of time.

16 So you're going to have that line
17 that is going to be very jagged. It is going
18 to look more like a lightning bolt as opposed
19 to smoother line. That is the visualization of
20 that volatility.

21 Q. You talked about the to versus
22 through, are you referencing a glide path
23 there?

24 A. I am.

25 Q. And is that an important

1 DONALD C. STONE

2 consideration when determining whether or not
3 to pick a certain target date fund?

4 A. Well, as I mentioned, you have to
5 versus through. I think it is only -- it is important in
6 two ways. One is if a committee says our
7 participants keep their money in the plan so
8 they need something that is going to continue
9 to adjust over time, then a through would make
10 sense in that instance. Most plans that is not
11 the case. Despite the fact that a lot of
12 people would like people to keep money in the
13 plan, there are a lot of committees that would
14 like people to keep money in the plan,
15 typically they don't. They roll it into an IRA
16 or do whatever they are going to do.

17 But the other factor that people
18 are going to look at is at retirement age, so
19 at 65, that arbitrary age we all kind of focus
20 on, what is the equity exposure at that point.
21 The range is going to be -- in the industry is
22 going to be from about 20ish percent to about
23 55, 57 percent. Okay. So it's a pretty good
24 range. So that is going to be the other
25 factor.

1 DONALD C. STONE

2 Some committees may say, well, I
3 don't want to have that kind of volatility or potential
4 volatility with a 55 percent exposure to
5 equities at 65. I want my participants to have
6 less than that and so of the three that you're
7 bringing to me, one of them has 55, one of them
8 has 45, and the other has 42, they probably
9 want to focus on talking about the 42 and 45
10 and in trying to decide between those two.

11 Q. So would you look -- well, let's
12 say this differently.

13 Are all glide paths the same?

14 A. No, glide paths can be -- they all
15 start in a pretty close proximity to each
16 other. But after that, there is a broad range
17 of, one, where they end up ultimately. And
18 two, there is a broad range when they decide to
19 begin to lower the equity exposure.

20 So that changes, there's a broad
21 range of choices there. There are ones that
22 are 35, 40 years to retire and they are already
23 starting to diminish equity exposure. There
24 are ones that wait to more like 20 years before
25 retirement before they do it.

1 DONALD C. STONE

2 So there is a lot of variety of
3 how these are created and keep in mind the
4 asset allocations under -- that make up the
5 glide path. We are thinking about it as
6 equity, fixed income and cash, well, it is
7 really, you know, equities could be
8 international equities, it could be emerging
9 markets, it could even be frontier markets,
10 probably not, but could be. It's going to be
11 domestic markets, it's going to be the exposure
12 of large cap versus small cap.

13 So all of these go into when you
14 look at a glide path you're just getting the
15 first snapshot of how these are created. And
16 it's a -- again, this is why I think it's a process.
17 Everything about ERISA is a process. It's a
18 process to educate committees, but they need to
19 understand how these work because it might look
20 very simple on the surface that, you know, I
21 don't want a lot of equity exposure at
22 retirement and then you show them, yeah, but
23 your participants are unlikely to be
24 successful.

25 One plan I looked at a lot a while

1 DONALD C. STONE

2 back, to give you an example, the average
3 balance was \$5200. There is no way that those
4 folks are going to get a successful requirement.
5 Most of them aren't going to get to having the
6 balance no matter what when the average balance
7 is 5200. They obviously need to be encouraged
8 to save a lot more. But they also need to have
9 an equity exposure to have any chance of having
10 a reasonable balance at retirement.

11 Now that is an extreme on one end,
12 but that's a -- actually that's a billion dollar plus
13 plan. You can look at the other end and say
14 you got a defined benefit plan, heck, you don't
15 need to save that much.

16 So the answers can be quite
17 different for each plan. It's just a very
18 thoughtful process to go through.

19 Q. That's helpful, thank you.

20 Turning back to I want to go back
21 to we talked about the qualitative -- quantitative
22 factors that you would present to your -- to
23 the committees which you served as consultant.

24 What about the qualitative factors
25 that would be presented to a committee for

1 DONALD C. STONE

2 consideration of monitoring its investment
3 options?

4 A. Okay. You want me to just
5 enumerate them.

6 Q. Yes, if you can.

7 A. So I think I've spoken to a couple
8 of these before, but you're going to look at
9 the manager tenure, the depth of the team,
10 stability of the organization overall and you
11 can see some of these are related to each
12 other, but they are different.

13 You're going to look at the
14 operational processes which actually means
15 looking at how does their trading desk work.
16 How good are they at trade execution which can
17 make a real difference over time. How well do
18 they control risk internally. How do they
19 diversify so that they don't find themselves --
20 you know, how do they track that they are not
21 getting too heavy into a particular, let's say
22 into tech or too heavy into consumer durables
23 or whatever the heck it may be.

24 You want to look at how they put
25 this thing together. And you want to look at

1 DONALD C. STONE

2 reputational risk as well.

3 So there a number of factors that
4 come into play in that regard. Because they
5 are qualitative they are a little bit more --
6 you're not going to -- you're not reporting on
7 hard metrics as much. There is some of that
8 which is the how long has the manager been in
9 place, is it a single manager, is it a team.
10 So on and so forth.

11 Some of the metrics are a little
12 bit harder to report as just a metric.

13 Q. Understood. So was it your
14 experience that the committees or was it your
15 expectation that the committees considered
16 these metrics each time you provided them in
17 monitoring investments offered in the plan?

18 A. You do want them to consider them.
19 You want them to understand the qualitative why
20 it is important if there is something that
21 you're telling them about that is qualitative
22 metrics or a measure, you want to make sure
23 that they understand where does that play into
24 the equation and everything.

25 It is one of -- quite often it is

1 DONALD C. STONE

2 not one thing that makes you choose a
3 particular manager or makes you decide to not
4 choose a manager or to remove a manager,
5 whatever. It is usually a combination of
6 factors that come into play.

7 So and you're not going to report
8 on the qualitative -- you know, there are
9 certain things maybe it will just be in the
10 book, but it is not something that you're going
11 to spend time talking about. The manager has
12 another quarter of experience this quarter,
13 you're not going to go into that. As long as
14 it is the same manager you're not going to
15 worry about that.

16 Q. When you talked about the
17 quantitative metrics you mentioned, I think,
18 comparison to peer group and I think I'm
19 quoting you accurately, you said that was very
20 important.

21 A. Yes.

22 Q. Why is that very important?

23 A. Well those are the -- and I think
24 that is -- I mean you're looking at two different
25 things. You're looking at, they're related but

DONALD C. STONE

they are different. You're looking at how a fund is doing versus its benchmark. You're also looking how it is doing versus peers.

Peers are the -- you can't invest in the benchmark, but you can invest with the peers. So if you're -- you would not want to choose, I don't think, somebody who is lagging their peers substantially. It is just another snapshot of that -- of how well are they doing. How is that performance. It is another element of that.

I think in target date funds it is very relevant to see how are they doing versus other funds that are similar to them.

Sometimes you do an analysis of -- if you have a to fund, I don't think this is important myself, they may say we want to see what other to funds are doing and you compare this against maybe five other to funds as opposed to through funds. So there are different ways that you slice it.

The peers is actually what real managers are doing in realtime out in the real world versus what your particular manager of

1 DONALD C. STONE

2 your investment product is doing.

3 Q. So is there specific for the
4 reporting metrics that you would provide to
5 your client, is there a specific time period of
6 performance versus benchmark and performance
7 versus peer group that you would typically
8 provide or expect to see?

9 A. So I think this goes to -- the
10 answer is yes. And in a vacuum you want to
11 look at as many different things as you can.
12 So quarter, year to date, one year, three year,
13 five year, 10 year if it exists. I probably
14 wouldn't look much past that unless it was the
15 rare case where the same manager had been in
16 place for 15, 20 years. That does exist but it
17 is not as common.

18 But I would also -- all of this
19 needs to get tied very specifically to the
20 investment policy statement. So the investment
21 policy statement, you have to make sure that
22 where your focus is is making sure that you're
23 compliant with the investment policy statement.
24 Not necessarily some set of metrics that you,
25 as a consultant, think people ought to be

DONALD C. STONE

looking at.

It is great that you have that, but your focus has to be on what does the investment policy say. Because that is a -- that's part of the plan documents and it is part of what the plan committee is going to use to evaluate. So it has to tie to that investment policy statement.

The investment policy statement, for example, says we wouldn't focus on three year, five year numbers, which would be reasonable. You may report on the 10 year, but you're not going to go put something on watch, for example, because the 10 year number is not attractive. Because that doesn't tie to the IPS. Now the IPS, of course, you can go out and you can rewrite the IPS. You can have a conversation on that but those things are reporting and the IPS really need to tie together.

And then a lot --

Q. Okay.

A. A lot of times you run into problems with that because of the way people

DONALD C. STONE

create the reporting system.

Q. So let me just ask you this. Is it your testimony that if there is a reporting metric that is provided to the committee that the committee finds to be concerning and wants to put an investment option on watch, because of that your testimony is that they could not do that if the investment policy statement doesn't specifically require that?

A. No, no, no. Sorry, that is not my testimony. Keep in mind the committee has flexibility to -- it's a guiding document. The IPS is a guiding document and depending on how it is written, if it says you will do something then I think this a clear you're going to have to do that. But quite often it says you may do something. So you have to look at the language of it.

They can put it on watch even though the IPS doesn't reference it, but I think that raises an issue at that point of, okay, what is going on with our IPS. You want to take a look and say, why is it important that we put it on watch, but it is not covered

1 DONALD C. STONE

2 in the IPS. That would seem -- it would raise
3 other questions, I think, as opposed to --

4 Q. Got it.

5 You mentioned earlier -- I'm going
6 to backtrack a quick second to this program
7 that simulated the target date fund and you
8 were talking about volatility in those
9 simulations. Do you recall that?

10 A. I do.

11 Q. You're talking about -- when
12 you're talking about volatility, you're talking
13 about performance volatility?

14 A. That would be performance
15 volatility, yes.

16 Q. Is the program being run or is it
17 reflecting performance compared to a certain
18 benchmark and peer groups or one or the other?

19 A. No. The simulation -- you're
20 talking about the Monte Carlo.

21 Q. Yes.

22 A. The Monte Carlo is taking the
23 demographic information that we talked about
24 and it is then going and running that against
25 all possible combinations or at least thousands

1 DONALD C. STONE

2 of possible combinations of return sequences
3 that could happen. It is not worried -- it is
4 not looking at a benchmark or peer group, it is
5 looking at actual returns.

6 So let's say, for example, it's
7 going to look at returns for bonds using -- and
8 you're going to have probably -- probably used
9 a broad index for the Barclays Ag, for example,
10 for bonds as the proxy. It's going to look at,
11 you might use the Russell 1000 as the proxy for
12 domestic equities. You might use something
13 else for -- you could break it down as much as
14 you want.

15 You can put in as many inputs, if
16 you want to get down and have short-term bonds,
17 but it is actually looking at projecting against those
18 indexes what you're -- and running what you're
19 balance might be. It is running against another fund.
20 It is not running against any particular peer group or
21 whatever. It is running against what those
22 indexes might generate in returns going on a go
23 forward basis.

24 Q. I see. I got it.

25 A. You got it, okay. Is that okay?

1 DONALD C. STONE

2 Q. Yes. I'm okay, thank you.

3 Generally speaking, when it comes to investment
4 funds, do you agree with me that there are time
5 periods where there are fluctuations in
6 performance over time?

7 A. Absolutely.

8 MS. ENGELMAN: It's 12:45 eastern,
9 can we take 20 minutes now and do a quick
10 lunch? Does that work? I know it is
11 probably dinnertime to you, Mr. Stone.
12 Let's go off the record

13 THE VIDEOGRAPHER: The time is 5:44
14 p.m. and we are off the record.

15 (Lunch recess taken at 5:44 p.m.
16 European standard time)

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1 DONALD C. STONE

2 A F T E R N O O N S E S S I O N

3 6:14 p.m.

4 D O N A L D C. S T O N E,
5 resumed, having been previously duly sworn,
6 was examined and testified further as
7 follows:

8 THE VIDEOGRAPHER: The time is 6:14
9 p.m. and we are on the record.

10 BY MS. ENGELMAN:

11 Q. Hi, Mr. Stone. We just had a
12 short lunch break here on the east coast maybe
13 dinner break for you. Welcome back.

14 Did you speak to your counsel
15 during the break?

16 A. I did not.

17 Q. I have a hypothetical for you. So
18 we are going to switch gears a little bit.

19 So suppose an investment fund
20 underperformed its benchmark on a three and
21 five-year basis for a single quarter. Would
22 that in your experience require placement on
23 the watch list?

24 A. It is usual it would be on for
25 just one quarter. I think you have to go back

1 DONALD C. STONE

2 and look at the IPS and see what it -- how it
3 would direct you, if you will. So if something
4 was -- I don't know how you could be on a watch
5 list for a five-year period and had it happen
6 just the one quarter. I mean the numbers are
7 not adding up for me.

8 Q. The first quarter that there is a
9 detection of underperformance against benchmark
10 on the three year and five-year period.

11 A. Okay.

12 Q. Have you ever had a situation
13 where a committee placed a fund on a watch list
14 based on one quarter of underperformance,
15 irrespective of any other factor?

16 A. I can't recall a specific instance
17 where that fact pattern existed and so I just
18 can't speak to that in terms of actual
19 experience. As far as that is concerned.

20 I think that would be a obviously --

21 Q. Do you personally believe that a
22 fund should go on a watch list if there was a
23 three year and five year underperformance for a
24 single quarter?

25 A. I think -- are you assuming --

DONALD C. STONE

first of all, you don't know if it is going to be a single quarter, if I understand your hypothetical correctly. It is under for one quarter, you don't know what the next quarter is going to look like at this point, correct?

Q. Correct.

A. I think it's a conversation that you have with the committee. You certainly don't ignore it. Suddenly this thing is on watch for a three year and five year -- not watch. It's underperforming for a three year and five year, I think that becomes a conversation with the committee and it is possible it could go on watch because -- and particularly, again, looking at the IPS, you have to look at that and say, well, if there is criteria for the IPS.

There is nothing wrong with putting something on watch and saying this needs closer scrutiny, that is what watch means. So I don't think there is problem doing that. I think, but again, I would defer to the IPS and I would have a conversation with the committee and say they could make a

1 DONALD C. STONE

2 determination that we are not going to put it
3 on watch list, we will wait until next quarter.

4 But I think that would be one of
5 those things that you look at and say, if it is
6 on for one quarter it's probably really likely
7 it is going to be on the next quarter too
8 particularly for three and five year numbers.
9 It is hard to see those rolling off.

10 So I think it would be reasonable
11 to consider putting it on watch. I don't think
12 you have to put it on watch, but it certainly
13 ought to be discussed.

14 Q. How would your answer be impacted
15 if the underperformance on the three year, five
16 year comparison to benchmark was one basis
17 point.

18 A. Well, again, I think you're still
19 going to have a conversation and that's a
20 conversation that you're having with the
21 committee. It is only one basis point. I
22 think it's a fair and honest conversation to
23 have with the committee to say, you know, it is
24 barely there, but here is where we're at.

25 I think you can also look at --

DONALD C. STONE

one of the things that would happen in this case in your hypothetical, I would think that the advisor would go and say what number is going to drop off next quarter. Because you're always adding a number and subtracting a number, okay, for the three year and five year.

So something is going to go off and something is going to come on. You don't know what the number that is going to come on at the hypothetical point that you're talking about right now. But what you do know is what number is going to drop off.

What the advisor would be able to say is, yeah, it's one basis point now, but it is probably going to be back in compliance next quarter or it is going to be much worse off based on the number that is dropping off.

So I think you look at that. It's a conversation -- like I said, you don't have to put it on watch, but I think that raises the question that you want to have a conversation with the committee and have the committee make a decision as to whether they want to just watch and wait and see or whether they want to

1 DONALD C. STONE

2 put it officially on watch. They have that
3 option.

4 Q. In your experience would the
5 committee also want to look at, not just the
6 three and five-year performance against
7 benchmark, but also look at performance against
8 the peer group?

9 A. Absolutely. I think at that point
10 you probably step back and, again, if I was on
11 the committee I would be saying, okay, so first
12 of all is this going to be on watch next
13 quarter and the advisor ought to be able to
14 tell you right then a there. And then two, by
15 how much, depending on what number is dropping
16 off and is it going to have a magnitude.
17 What's the magnitude of the impact. And then
18 let's look at the other number.

19 It's a conversation that the
20 committee is going to have to say, okay, there
21 is issue here, let's take a look at it. It doesn't
22 mean the house is on fire. It may turn out to
23 be on fire, but at this point you don't know
24 that. It is just we have an issue we ought to
25 look at, we ought to be thoughtful about it and

1 DONALD C. STONE

2 take a look and see what else is going on to
3 you point and look at the peer group and any
4 other metrics that seem appropriate at the
5 time.

6 Q. So similar hypothetical for you.
7 Suppose a fund underperformed its benchmark
8 again on the three and five-year basis for five
9 quarters, irrespective of any other metric,
10 would that automatically require, in your view,
11 removal of the fund?

12 A. Well, again, I think you go back
13 to what a particular hypothetical, what's the
14 hypothetical IPS say. You go back to your IPS
15 and it's reasonable that you two companies or
16 two 401-K plans could have different IPSS that
17 have different metrics, that's possible. They
18 may be -- I would hope they would be similar
19 but they wouldn't necessarily be the same.

20 The first thing is go back and
21 look at the IPS and see what it says. See if
22 it says will or whether it says shall or
23 whether it say may. I mean this is a process
24 and so ERISA is all about process, it is not
25 about outcomes. So I think at that point

1 DONALD C. STONE

2 you're going to -- five quarters, how far under
3 is it, you have to look at the whole thing. I
4 think you have to step back and look at the
5 whole thing. The first thing is look at the
6 IPS and follow the IPS. You don't look at
7 anything else.

8 Q. So irrespective of an IPS, in your
9 view, objectively, if a fund underperforms in a
10 three year and five year compared to its
11 benchmark only, irrespective to any other
12 metric, should that fund automatically be
13 removed from the plan lineup?

14 MR. ROBERTS: Objection to the
15 form.

16 A. The answer is, I can't give you
17 answer to that because you do look at a lot of
18 other metrics. Certainly it would be on watch,
19 but whether you're going to remove it that
20 depends.

21 Q. When you are evaluating or
22 monitoring the performance of a target date
23 fund and a target date fund is obviously made
24 up of many different vintages, right, correct?

25 A. Correct.

1 DONALD C. STONE

2 Q. And those different vintages
3 perform differently; correct?

4 A. They do, yes.

5 Q. So in your experience, when you
6 are helping committees to evaluate the performance,
7 for example, on a three year and five-year
8 period of target date funds, how is it that you
9 look at the target date fund as a whole in
10 order to encompass the performance of the
11 various vintages?

12 A. Well, I think you're going to look
13 at, with the target date you're going to look
14 at potentially three different things. You're
15 going to look at the overall target date level
16 and that would include all the vintages and
17 what the -- how that performance is. And
18 depending on how you're reporting on it,
19 do you have a point system or not, whatever
20 mechanism you use for that.

21 Two, you're going to look
22 at each individual vintage and you're going to
23 certainly rank them as to whether they are
24 compliant or not in terms of peer group, in
25 terms of absolute performance. And I think

1 DONALD C. STONE

2 that in some cases depending on what is going
3 on on any given quarter you're not necessarily
4 going to do this, but if you have a problem,
5 you have an issue with a fund, then I think
6 you're going to want to go and look at the
7 funds that comprise each vintage and see what
8 is happening with them. Because one or more of
9 those funds is probably or is definitely
10 driving that underperformance.

11 Usually there is a couple that are
12 having the problem and you want to understand
13 is this something that is kind of something
14 that we might see from time to time or is there
15 a bigger problem.

16 So I think you're going to look at
17 all of those as a part of that discussion which
18 you will have with the client.

19 Q. Did you ever have a scenario where
20 you average the performance of the various
21 vintages to look at the average performance of
22 the underlying fund on a three year and
23 five-year basis?

24 A. I've seen that done. I think that --
25 I have some concerns about that because I think

DONALD C. STONE

it can hide issues. I think as opposed to -- I think it is done to kind of clarify things. At least that was the original idea. We could rate this fund a 6, we could rate it a 5, we would rate it a 10, whatever the scoring would be in that case. And that keeps it simple in a sense, but it also completely I think hides -- you don't really know what is going on or what's driving that issue.

So I'm skeptical of kind of rolling that up in an average or, for example, if I'm going to take an average, why wouldn't I take a median and say that you could get into this kind of go down a rabbit hole and I'm not sure that is helpful to a committee. Could they use that, they can, if this is what they choose to do. If this is what their IPS says.

Let me go back. I think committees operate differently and there is no one perfect IPS and I'm not suggesting there are. I think there are elements that obviously have to be in any IPS and committees can make different decisions based on -- may make different decisions based on similar facts in

1 DONALD C. STONE

2 some cases. But, again, it comes back to it is
3 not about the outcome, it is about process with
4 ERISA.

5 Q. Kind of along those same
6 questions with regard to evaluating the
7 performance of a target date suite. In your
8 experience would you say that if in your
9 experience, Mr. Stone, in evaluating the
10 performance of a target date fund suite, would
11 you say that if more than 50 percent of the
12 underlying vintages were underperforming, that
13 that meant that the target date suite was
14 underperforming? Did you reach that conclusion
15 in your experience?

16 A. Yes.

17 Q. Was that always the case?

18 A. I would say, just again on that
19 hypothetical, I would say if 50 percent or more
20 are underperforming, then I think -- then
21 obviously I think there is an issue that needs
22 to be looked at with that particular target
23 date suite.

24 Q. Could a committee look at the
25 performance and the level of performance or

DONALD C. STONE

level of underperformance and reach a different conclusion?

A. You kind of went to the heart of what I said a few minutes ago. You need to evaluate it. You can't just let it go. You need to spend the time to go and evaluate what is the underperformance. What is causing that underperformance. And then you may make a decision that right now we think it is okay still. Okay. I don't think that is possible without doing the evaluation.

In other words, the whole point is what the -- the hypotheticals you're bringing up trigger a needed response by the committee and the response is not absolute, every single time no matter what you have to do A and it is not that you have to throw out the fund. It's that you have to evaluate it and make a determination as to what the appropriate action is.

Q. One more hypothetical along these lines and then we will move on.

So say there was a target date suite that underperformed its benchmark on a

1 DONALD C. STONE

2 three and five-year period, but that benchmark
3 outperformed 90 percent of the other assets in
4 it's class, would that inform how the committee
5 evaluated the underperformance?

6 MR. ROBERTS: Objection to the
7 form.

8 A. Can you repeat that, please?

9 Q. Yes.

10 MS. ENGELMAN: Can you read it
11 back, Bill, because I'm not sure I can say
12 it. If he doesn't understand it I can
13 rephrase it, but I don't know that I could
14 repeat it exactly as I said it.

15 (Requested portion of record read.)

16 A. What you're saying is the
17 benchmark measuring the target date fund
18 outperformed 90 percent of all of the other
19 target date funds?

20 Q. Correct.

21 A. So all the target date funds, 90
22 percent of them underperformed for some
23 hypothetical reason, and that's at least
24 theoretically possible. Again, I think what
25 that would say to me, I, as a committee member,

1 DONALD C. STONE

2 I would say, wow, that is interesting
3 information. So again, and that would probably
4 give me some degree of comfort in the
5 short-term in looking at this, but I would
6 still say, we need to understand why are we in
7 that 90 percent. What are we doing or what is
8 our fund doing. We just need to understand it
9 better.

10 I think all of this triggers a
11 need for additional looking and scrutiny to the
12 situation. It doesn't necessarily right off
13 top of the bat dictate an absolute answer. It
14 dictates additional scrutiny.

15 Q. So I was going down your
16 biography, Mr. Stone, and we went on a whole
17 detour. So I'm going to reroute back to your
18 sort of your background.

19 I understand doing the PSA time
20 period you served entirely as a 321 consultant
21 and then 2014, am I correct, that you sold PSA
22 to Pavilion?

23 A. Correct, in June of 2014.

24 Q. And you became an employee of
25 Pavilion at that time?

DONALD C. STONE

A. That's correct. I was an employee and shareholder.

Q. What was your role at Pavilion from 2014 until you retired in 2019?

A. I was -- my title was executive director and I was responsible for a number of relationships that I was -- had been -- was personally working with at the time we sold the company to maintain those relationships, to make sure they stayed with Pavilion and to ultimately transition them to other people, but not in that initial three year -- the first three years.

Then I was also responsible for being one of the spokespeople for the firm. So I did a lot of public speaking. A lot of conferences. I did some writing. I also continued my being on the executive committee of DCIIA, that's D-C-I-I-A, which you will see in my CV or in the bio I should say.

So I continued that role as well, which was obviously promoting better outcomes for participants. But that gave visibility to Pavilion.

1 DONALD C. STONE

2 I also did due diligence on
3 managed account products and probably a couple
4 of other things along the way. I did some
5 training of some of staff at Pavilion.

6 Q. So did you -- in your role at
7 Pavilion, did you serve as a 338 advisor to any
8 clients?

9 A. I did. In 2017 I served as a --
10 began serving as a 338 for a defined benefit
11 plan of one my clients. I want to say 1.2
12 billion or so.

13 Q. Okay, do you remember which client
14 that is?

15 A. Yes, it was I think in the record,
16 Packaging Corp of America. In 2018 I became a
17 338 for the defined contribution plan as well.

18 Q. Is that the only plan -- for
19 Packaging Corporation of America, is that the
20 only plan that you served as a 338 advisor?

21 A. That's correct.

22 Q. So the record is clear, what is
23 the difference between a 321 and a 338 advisor?

24 A. So a 321 advises, provides advice
25 to clients that has no discretion. The

1 DONALD C. STONE

2 ultimate decisionmaking responsibility lies
3 with the committee. 338 has discretion to act
4 on the investments within the mandate that they
5 have been given.

6 So you could have a -- you
7 could be a 338 for one investment choice in a
8 plan, for example, or for the whole plan. And
9 the committee still maintains some monitoring
10 responsibility of that 338, but it does shift a
11 lot of the liability for actual decisions to
12 buy fund A or fund B to the 338.

13 Q. When did the 338 relationship,
14 your 338 relationship end with Packing
15 Corporation, is that when you left Pavilion?

16 A. When I left Pavilion.

17 Q. When did it start?

18 A. So the defined benefit started in
19 2017, the defined contribution in 2018.

20 Q. With respect to the 321
21 relationships, did you continue the relationships
22 you had from PSA into your time at Pavilion?

23 A. I did. And I was responsible for
24 transitioning those relationships into Pavilion
25 and helping ensure that they were happy and

1 DONALD C. STONE

2 would remain clients. And then I was
3 responsible, ultimately, this would have been
4 in 2017, some time in 2017, maybe late 2017
5 early 2018, to begin transitioning those
6 relationships to other advisors within the firm
7 since I knew I was going to be retiring at -- I
8 didn't have an actual date at that point, but I
9 knew some time in the future I would be and it
10 wasn't that far off.

11 Q. Just to take this step by step.
12 From 2014 to 2017, early 2017, how many clients
13 would you say that you were personally
14 providing 321 services for?

15 A. Probably 15.

16 Q. 15?

17 A. Yes.

18 Q. Do you have an approximation of
19 the range of the plan size from small to big?

20 A. Yes. Probably the, probably from
21 the small end would be probably 30, 40 million.
22 With probably half of those relationships maybe
23 slightly more being just under or well over a
24 billion.

25 Q. I missed that last part?

1 DONALD C. STONE

2 A. Just under or well over a billion.

3 Q. That is a large range. How many
4 plans would you say were \$100 million and less?

5 A. I'm guessing at this point, but I
6 would say probably no more than three or four.

7 Q. How many would you say were over a
8 billion?

9 A. I said just under to over a
10 billion I think it was probably in the
11 neighborhood of 10 or so of the 15. So there
12 is a couple that would have been in let's say
13 half a billion dollar range.

14 Q. Did the quality of the services
15 that you provided as a 321 consultant vary
16 depending on whether it was a small client or
17 large client?

18 A. No. You asked me that earlier
19 today. Even at Pavilion it was the same. We
20 provided the same service.

21 Q. Did you have -- for these 15
22 clients in this time period, did you have other
23 individuals working alongside you as a
24 consultant or was it just you?

25 A. No, it was -- I had a team to help

DONALD C. STONE

me. For example, quarterly reports, we had at that point we had probably 50 people doing research in reporting. I would have people who would prepare reports for my review. I would have investment analysts who would do additional information if there was a need for some kind of a deep dive on a particular manager or not, I would be directing someone to get that information for me. I might be involved in that process as well, but I would have somebody else who is kind of driving it in that regard.

And I would usually have a, at least, some other, I don't want to say junior consultant, but somebody who was less experienced than I was, let's just say it that way, who would also go with me to meetings. So I would always have at least two people at a meeting, sometimes three, depending on what the topics were.

Q. From 2017 on you said you started to transition clients to people who were less experienced; is that correct?

A. Well, not necessarily people -- to

1 DONALD C. STONE

2 people who were not as close to retirement,
3 let's put it that way.

4 Q. Did you have any role with respect
5 to those clients from 2017 on?

6 A. It was an iterative process where
7 I was involved with some of them all the way
8 probably halfway through 2018, maybe a little
9 longer.

10 Q. I'm going to ask a similar
11 question of PSA. Do you feel that you
12 personally fulfilled your fiduciary duties with
13 being a 321 consultant with respect to each
14 plan that you worked with?

15 A. Are you talking with Pavilion or
16 PSA?

17 Q. Well, at both.

18 A. Yes, I think I fulfilled my
19 responsibility, yes.

20 Q. For the people -- for whom the
21 people that work under you and work with you,
22 do you have the same feeling with respect to
23 both PSA and Pavilion?

24 A. Absolutely. I trained a lot of
25 them, so it was a -- I trained a lot of them

1 DONALD C. STONE

2 and there was a particular way that we wanted
3 to -- if you want to think about it, it's a
4 process and we wanted to be very careful to
5 take care of our clients. That is my personal
6 philosophy about how I approach things.

7 So if you have a client -- you
8 have a responsibility to take care of them and
9 treat them the way that any other client would
10 be treated for that particular service that
11 you're providing.

12 Q. With the committees with whom
13 you worked, do you feel as though they were
14 good and prudent committees?

15 A. I do feel that. Obviously there
16 was a range of skill sets. There was a range
17 of size of committees, sophistication, so on
18 and so forth. But this is where, you know, we
19 would not -- we actually refused to take on a
20 couple of assignments at some time in the past
21 I remember because I did not think they were
22 going to take it seriously and I thought it was
23 going to be a problem and I didn't want any
24 part of it.

25 So the key is is that every single

DONALD C. STONE

committee we drove the process to say you have to get -- we are going to provide fiduciary education and somebody joins the committee, there is a process that they go through. They get removed from the committee we want to make sure that they actually have been removed from the committee and documented in writing. It's a very clear process frankly to avoid problems, but also most importantly to make sure, to the extent that you possibly can, you're acting in the best interest of the participants.

Q. You mentioned a range skill sets. What do you mean by that?

A. People come on to a committee, there are people you go in and the committee is already in existence, the plan is already in existence and you get to know people and you realize -- not to pick on HR, but quite often HR is not as investment savvy as the finance people. And then sometimes the finance people think they are more savvy than they actually are in terms of fiduciary issues or whatever.

So committees from a large corporation tend to have a bigger talent pool

1 DONALD C. STONE

2 to pick from to be on the committee. Sometimes
3 they have already got established more robust
4 processes before we come in. Sometimes not.

5 And at smaller clients quite often
6 we go in and here is what we would like to do,
7 which is one of the reasons that we got hired.
8 This is what we -- the process that we want to
9 go through to get you tuned up to where you
10 need to be to make sure you're overseeing the
11 plan appropriately, to make sure that we are
12 doing the best job, you're doing the best job
13 that you can for the people in the plan.

14 Q. Was it generally common in your
15 experience for HR folks to be part of the
16 committee?

17 A. Yes.

18 Q. Is that because the committee does
19 more than simply do financial analysis and
20 monitor investment performance?

21 MR. ROBERTS: Objection to the
22 form.

23 A. Yes, typically -- sometimes there
24 was a separate administrative committee, so
25 that's not unusual at some large corporations.

DONALD C. STONE

But generally it is one committee and the -- so there are issues that you deal with in terms of plan design. There are issues that you deal with in terms of, did you payroll right. Did you not include -- there are a lot of issues that happen with these plans and everything and so all of those issues would typically come to a committee at least to report out what is being done.

In some cases those administrative issues would be handled outside the investment committee room, but they would report back in as to what the follow up was. There was a lot of issues in terms of revenue sharing, in terms of how we are going to account for, we have a para account which is an account that could be set up to pay expenses of the plan and to actually reimburse companies for people who are working, spending most of their time working on issues around the plan and there are complicated rules around that.

So there is a lot of things that an administrative person does versus an HR person. Certainly the whole plan design issue

1 DONALD C. STONE

2 is a big issue for that side of the house.

3 Q. Generally speaking at Pavilion,
4 are you aware of any consultants who worked
5 there who you do not think fulfilled their
6 obligations as a 321 consultant or otherwise
7 worked with imprudent or disengaged committees?

8 A. I can't speak to whether -- to
9 what the committees were like for somebody that
10 I never met. So I can't really speak to that.

11 I would say the staff, all of the
12 consultants at Pavilion, I think I met all of
13 them because we had multiple offices, but all
14 the ones that I knew I think were serious and
15 dedicated about the work they did. And we had
16 a common process about how we went about --
17 what we presented to clients and how that --
18 how those decisions got made at to what to show
19 them.

20 To go back to what we talked
21 about earlier today. The process for picking a
22 target date fund would have been the same if it
23 was me, if it was a colleague of mine who came
24 over from PSA or if it was somebody who had
25 been at Pavilion for ten years before we sold

1 DONALD C. STONE

2 the firm to Pavilion.

3 Q. Got it, okay. And that would be
4 the same for not just selecting a target date
5 fund, but retaining a target date fund or
6 monitoring a target date fund?

7 A. That's correct. All of that would
8 be the same and in fact the research person who
9 was primarily responsible for spearheading the
10 target date efforts and to track them and to
11 investigate all the products that were out
12 there was one of my staff from PSA that came
13 over.

14 Q. And she did all of that work for
15 Pavilion?

16 A. He did.

17 Q. He did, sorry. When you sold the
18 business from PSA to Pavilion, did the
19 reporting capabilities change? We talked
20 earlier about reporting capabilities and how
21 those can change over time. Did that happen?

22 A. So the defined contribution
23 reporting essentially stayed the same.

24 Q. Okay.

25 A. The defined benefit reporting was

1 DONALD C. STONE

2 enhanced because Pavilion had been primarily
3 focused on endowments, foundations and defined
4 benefit plans and one of the reasons why they
5 wanted to acquire our firm is because of their
6 expertise in defined contribution was more
7 limited. So we had more resources, I will say,
8 but the systems that we used, the actual
9 reporting systems that we used I don't believe
10 changed at all.

11 Q. You talked earlier, sort generally
12 speaking in the industry how reporting systems
13 can change. Do you recall that testimony?

14 A. Are you talking about scoring
15 systems or are you talking about reporting --
16 like there are three or so major reporting
17 systems that everybody basically goes out and
18 buys. I'm not sure what you're saying.

19 Q. What are those reporting systems?

20 A. One of them was produced by
21 Morning Star. One of them is produce by
22 Markoff Systems and the third is -- the third -- I'm
23 not remembering the name right at the moment.

24 Quite often it is not unusual for
25 a shop to have two of those in-house and use

DONALD C. STONE

them in different ways.

Q. Those reporting systems may have different metrics embedded into them and spit out different metrics in different formats?

A. They all have the same metrics available. You can select which metrics you want to see. If you're printing out something, you can go in and customize those pages to include only the -- you can suppress some data and include other data, depending on what as a firm you decided what you want to show a client. All the metrics are available on all of these systems.

Generally speaking, if you go and look at -- I looked at probably the vast majority -- I've looked at all major firms out there for sure, they are all pretty much reporting the same stuff. It may look maybe formatted a little differently, but there is nobody out there who is, that I know of, who is not reporting or peer groups. There is a nobody out there who's not reporting absolute performance. There is nobody out there that's not doing risk adjusted performance and so on

1 DONALD C. STONE

2 and so forth. So everybody is providing that
3 same data pretty much.

4 Q. So you did mention scoring systems
5 earlier. How many of your clients at PSA or
6 Pavilion utilized a score system of some sort?

7 A. I don't think we used a scoring
8 system at the client level at all. In fact I
9 know we didn't. We never did that. A lot of
10 our -- okay, some of our colleagues did and
11 some of our colleagues didn't, but we never did
12 use that.

13 Q. Do you have an opinion about
14 whether or not just as a general matter a
15 scoring system is appropriate or inappropriate
16 in evaluating investment options?

17 A. I guess I will ask you what do you
18 mean by appropriate or inappropriate in the
19 context of what we are talking about here?

20 Q. Do you think it's a prudent way to
21 monitor investment options as a general matter
22 or an imprudent way as a general matter?

23 A. I don't think it is necessarily
24 imprudent. I'm not a huge fan of scoring
25 systems, but I don't think by definition they

1 DONALD C. STONE

2 are imprudent, no.

3 Q. Mr. Stone, in your report you
4 make several references to the relevant time
5 period. What time period are you speaking
6 about?

7 A. Can you show me a particular
8 place in my report where that -- I'm not going
9 to do a memory test tonight.

10 Q. Sure. Give me a second.
11 Paragraph 60 as an example.

12 A. 6-0?

13 Q. Yes.

14 A. Let me get to that. I'm on 60.
15 You want me to read through that?

16 Q. In the second sentence you say,
17 "The committee generally met quarterly during
18 the relevant time period."

19 What is the relevant time period
20 that you're referring to there?

21 A. Well, I would be referring to the
22 class period is I guess what I'm saying.

23 Q. Okay. What is the class period?

24 A. I believe it began in the end of
25 2014 and runs to the present.

1 DONALD C. STONE

2 Q. You believe it began in 2014?

3 A. I think at the end of 2014 is when
4 it began.

5 Q. So if we turn to the conclusions
6 in your report which are on page 66 paragraph
7 148.

8 A. 66 paragraph 148. Okay, I'm
9 there.

10 Q. It says, "The conclusion is the
11 committee failed to established and apply a
12 reasonable process to monitor the challenged
13 investments." Do you see that?

14 A. I do.

15 Q. So what are the challenged
16 investments that you're referring to there?

17 A. I think we are referring to the
18 Freedom Funds.

19 Q. Anything else?

20 A. I think that's the focus.

21 Q. So when you say the committee
22 failed to establish and apply a reasonable
23 process, do you have a time period associated
24 with that?

25 A. It is over the entire period that

1 DONALD C. STONE

2 is covered within my report which talks --
3 which focuses obviously starting in 2014 and
4 goes into probably 2020 at least.

5 Q. Do you have a sense of when the
6 class period runs through?

7 A. Well, the class period as I
8 understand it, that we are still in the class
9 period.

10 Q. You said your report ran from 2014
11 to 2020; is that correct?

12 A. 2020 is about where it I stopped
13 commenting on things, yes.

14 MS. ENGELMAN: Can we go off the
15 record, I'm having issues with him freezing
16 and I don't know if it's just me.

17 THE VIDEOGRAPHER: The time is 7
18 p.m. and we are off the record.

19 (Recess Taken.)

20 THE VIDEOGRAPHER: The time is 7:05
21 and we are on the record.

22 MS. ENGELMAN: Bill, would you mind
23 reading back the last thing that you have.

24 (Requested portion of record read.)

25 BY MS. ENGELMAN:

DONALD C. STONE

Q. Why is it that you stopped commenting around 2020?

A. Basically the period that I was focused on has to do with the behavior that took place in 2015, 2016, 2017, 2018, 2019. 2020 they put in a new IPS and I think there was, also at that point there was some additional training that was being offered from a fiduciary perspective.

So I didn't think there's was a lot else to comment on that point. In talking with counsel that was the period they wanted to focus on I guess is the best way to put that.

Q. So is it your opinion that -- did you review all of the materials relating from 2020 forward or you didn't review the materials at all?

A. No, I did. I reviewed all the documents that I said I reviewed. I looked at all of them. If you notice there is nothing in my report that goes into that further period.

Q. So when we look at the litigation documents that are cited in Appendix B, that goes through 2024, the first quarter of 2024

1 DONALD C. STONE

2 and you reviewed all the materials through
3 2024; is that correct?

4 A. What was the last document in
5 2024?

6 Q. It looks like you reviewed the
7 meeting -- everything up to Q1, 2024.

8 A. That sounds right, yes.

9 Q. Do you know when in 2020 your
10 recorder of what month your opinion essentially
11 stopped?

12 A. I'd have to look at my report to
13 figure that out at this point.

14 Q. Sitting here today without looking
15 at your report you don't know when in 2020 you
16 stopped defining?

17 A. No, I can't tell you what month,
18 no

19 Q. But it was some time in 2020?

20 A. That's the last thing that I
21 actually wrote about, yes.

22 Q. Is it your opinion then from 2020
23 to 2024 that the process was prudent?

24 A. I did not reach a judgment as to
25 whether it was prudent or not during that

DONALD C. STONE

period.

Q. So when we say -- when we look at your conclusions on paragraph 148 when it says, "The committee failed to establish and apply reasonable processes to monitor the challenged investments." You're talking about a period that is from 2014 to some time in 2020; is that correct?

A. Yes, that be would correct.

Q. So from 2020 on it is not your conclusion that the committee failed to establish a reasonable process to monitor the challenged investments; is that correct?

A. Well, again, I have no comment on it. There is commentary in my report.

Q. What I'm trying to understand is if you independently made a determination as to the reasonableness of the process during that time period or whether counsel told you that you should not focus on that time period?

A. Counsel did not tell me not to focus on it, but we did not focus on that time period.

Q. Who is we in that sentence?

1 DONALD C. STONE

2 A. Well, I didn't spend my time
3 looking at documentation on that. So I think
4 it has to do with when the -- the Freedom Funds
5 changed over was what, 2019, so that's a
6 significant change. When they got out of the
7 Freedom Funds and got into the other fidelity
8 funds that is where my opinion ends.

9 Q. You think that happened in 2019,
10 is that your testimony?

11 A. I think they switched, again, I
12 don't want this to be a memory test, we could
13 look at my report. I think they switched out
14 of the Freedom Funds in 2019. I don't remember
15 what month.

16 Q. So focusing I guess on the -- do
17 you know what month your review in 2014
18 started?

19 A. I looked at all of 2014, because I
20 looked at -- actually I looked at all of 2014.
21 I was looking at meeting minutes so I would
22 call it the entire year of 2014.

23 Q. So from January 1st, 2014 to some
24 time in 2020 was the focus of your review?

25 A. That's what my report covers, yes.

1 DONALD C. STONE

2 Q. When you say that the committee
3 failed to establish an apply a reasonable
4 process to monitor the challenged investments,
5 is there anything specific in 2014 that was
6 unreasonable in your view?

7 A. Well, I think one of the things is
8 we don't know how the Freedom Funds got into
9 the mix in the first place. They were selected
10 prior to -- I believe prior to Ascende being
11 the advisor, if I remember correctly. So when
12 you look at the minutes, again, the minutes to
13 me and the IPS is from 2015. So -- I don't
14 think it was -- I don't recall an IPS prior to
15 that. So the IPS was 2015 I guess is the
16 relevant document.

17 Q. So I appreciate that. My question
18 is a little different which is, can you identify
19 anything specific into 2014 that the committee
20 did that was unreasonable with respect to
21 monitoring the Freedom Funds?

22 A. I don't think they had a process
23 in place to monitor them that tied to the IPS.
24 What the advisor was providing, I don't know
25 that it tied to an IPS.

1 DONALD C. STONE

2 Q. In 2015 is there anything specific
3 other than what you just mentioned that you
4 identified as unreasonable with respect to
5 monitoring the Freedom Funds?

6 A. Well, again, I think in 2015 the
7 funds should have been -- they were on -- they
8 were on watch and they were on watch -- one of
9 interesting things, they weren't on watch for
10 underperformance and yet the funds were
11 underperforming. And that ties into the IPS.
12 But what they were actually on watch for, at
13 least the way they came off of watch later on,
14 they are were on watch because of the lack of a
15 three year performance number at all for some
16 of the underlying funds.

17 I think that raises a question
18 about how they got selected in the first place.
19 If you don't have a track record you can look
20 at how do you make a selection in that
21 particular instance. That's the first thing.

22 The second thing is, if they
23 actually are underperforming overall, each
24 underlying fund, why wasn't it on watch for
25 that purpose at that particular time.

1 DONALD C. STONE

2 Q. Mr. Stone, are you offering an
3 opinion on the committee's selection of the
4 Freedom Funds?

5 A. No, that is prior to the class
6 period. So I don't have an opinion on that. I
7 think -- I have questions in my mind about it.
8 I have no idea how it got in there. I guess
9 I'm saying Ascende doesn't seem to have asked
10 how it got in there as well and didn't seem to
11 do any due diligence, from what I see in the
12 record on how they got in there as well.

13 Again, it is prior to the class
14 period, so that's kind of not an issue. I'm
15 not volunteering any opinion.

16 Q. So it has nothing to do with your
17 report; is that right?

18 A. I think --

19 MR. ROBERTS: Objection to the
20 form.

21 A. I think the selection process -- I
22 have questions -- it carries forward. Okay so
23 in the period when they were chosen in a sense
24 is not relevant because it is before the class
25 period. But the same behavior, unless it is

DONALD C. STONE

corrected, carries forward into the class period in which case nobody looked at why they got selected. Nobody went back and why did we select these things, why are they here.

There was is an opportunity to do that when they were on watch for not having three year numbers in some of the funds. That would have been an opportunity for the committee and advisor to suggest that they go and take a deeper look and understand how did they choose these and are there -- do we want to consider other alternatives.

Q. Was is it your opinion that when Ascende became the advisor in 2015 it should have evaluated whether or not the Freedom Funds were an appropriate investment option?

A. I would think they would have done that for all the investment options that were in the plan. That would be a normal part of the process.

Q. Is it your opinion if at any time that Ascende became the investment advisor there was any underperformance as compared to benchmark or peer groups, that that fund would

1 DONALD C. STONE

2 be removed at that time?

3 A. Again, I can go back and look and
4 say what does the IPS say and the answer I'm
5 going to give is the same one I gave awhile
6 back which is, it doesn't instantaneously mean
7 that you're going to remove it. It means it
8 needs to be reviewed and you need to understand
9 more of the reasons for the underperformance.
10 And there may be a reason that you would keep
11 it and there may be a reason why you would
12 remove it.

13 Q. Got it.

14 Moving forward, I want to make
15 sure it is clear that your opinion is that anything
16 prior to the class period is irrelevant, correct?

17 MR. ROBERTS: Objection to the
18 form, misstates testimony.

19 A. What I said was is that the
20 behavior carries forward and is current during
21 the class period because they didn't change
22 anything. They had an opportunity to look at
23 it and see whether it was appropriate or not,
24 but they didn't do that.

25 So obviously I could have an

DONALD C. STONE

opinion about 2009, that wouldn't make any difference either. That is irrelevant. But what is relevant is that if a behavior carries forward into the class period, it is relevant to that case. And that behavior did carry forward because nothing changed. They didn't do a look at that and determine whether or not it was still an appropriate choice to have in the plan.

Q. In 2016 did you identify any particular deficiencies or parts of the process that were unreasonable in 2016?

A. Well there is things in my report and -- I don't -- well I could go through the report, there are comments about 2016. But I have to look through the report. I'm not going off my memory to try to remember specific dates or things in 2016. If you want to show me something in my report I'm happy to comment on it.

Q. Well get through it. I'm wondering sitting here today whether or not you have an opinion on whether or not you know there was something in 2016 that you deemed to

1 DONALD C. STONE

2 be unreasonable in the process?

3 A. I think the -- again, without
4 looking at my report, which is what I would ask
5 to do, but having said that, the behavior in
6 2016, nothing changed, okay, in terms of trying
7 to comply with the IPS. There were a couple of
8 funds that I believe -- I think it was 2016,
9 but again I would like to look at my report to
10 confirm it, where the way it was reported by
11 Ascende is different than the way the IPS
12 reads. The two didn't sync up.

13 The committee didn't pick up on
14 this, they were getting reporting that was
15 showing compliance in one way when the IPS
16 called for compliance in a different way. And
17 that happened a couple of different times over
18 different time periods.

19 Q. The same question for 2017, just
20 do you have any sitting here today do you have
21 any opinion as to whether there was something
22 inspect in 2017 that was unreasonable with
23 respect to monitoring the Freedom Funds?

24 A. There is certainly -- in 2017 is
25 when there was a draft of the IPS that was -- a

DONALD C. STONE

new IPS was drafted, but it was not adopted. But Eagar, I guess that's his last name, Eagar, specifically said that the reporting that they provided to the committee was based on that 2017 IPS which was never adopted. So the committee was getting information that really -- they weren't able to -- they weren't getting the appropriate information as to compliance on -- I don't know how many different funds were affected, but definitely some were affected in that regard. And they didn't ask about it. And I think they were kind of getting, just assuming that the investment advisor was tying about back to the IPS or not, but they weren't. And they didn't ask about it and that's their responsibility.

Q. Other than what you just mentioned, anything in 2017 that you deemed to be unreasonable with respect to monitoring the Freedom Funds?

A. Again, I would want to look at my report. I don't want to try to go off my memory particularly it is getting late here. I'm happy to go look at any page that you like

DONALD C. STONE

and comment on it.

Q. We will do that, I want to get through these questions.

2018, anything that you can recall that you identified specifically for that reason that was unreasonable in terms of Quanta's process for evaluating the Freedom Funds?

A. Well I don't think anything change in 2018, so I guess the same thing would apply in 2018 in terms of the performance reporting being based on an IPS that had not been adopted. So that is problem. Nobody asked anything else about it. There may have been other things, but again, I would refer to my report.

Q. What about 2019?

A. Another draft IPS which was ultimately adopted in 2020. And actually one thing that I would want to comment on going back over this period that you were just asking about, as a part of this in the noncompliance, there were three different systems over that, call it 4 1/2 year period. Three different

DONALD C. STONE

scoring systems that were being used by Ascende and its successors that don't tie to an IPS. Don't tie to the IPS that Quanta had specifically.

So they had three different ways they were getting reporting. So they were not getting the information they needed and they were making decisions based on information that in some cases was not accurate as to how they would expect to see compliance. So some things may have been showing as compliant when they weren't and vice versa and what have you, because they weren't operating off the existing IPS. And it kept changing the system that they operated off of.

And at one point and this one I don't understand at all. I believe this was in 2019, basically the committee said stop showing us these scores on each of the funds. They just wanted to see whether it was pass or fail. Then one of the committee members, I think it was Campbell said that she didn't want to see the word fail. She wanted to use a different word.

1 DONALD C. STONE

2 But bottom line they didn't -- so
3 there was additional information, I would think
4 any committee would want to know what the score
5 was. If you're using a scorecard, even it's
6 the wrong one in this case, if you're getting
7 reporting on it, you'd want to know what the
8 score was because, to your point earlier, what
9 if you're just one basis point off, well that
10 is a different circumstance than if you're a
11 hundred basis points off. They didn't want the
12 score. So the score got dropped on that. I
13 have no idea why that happened. I don't find
14 that to be a good system to be followed.

15 Q. Mr. Stone, isn't it exactly the
16 opposite, that if you don't get the score but
17 you just look at the underlying criteria, you're
18 actually looking at the level of performance as
19 opposed to what the scores tells you?

20 MR. ROBERTS: Objection to the
21 form.

22 A. So it depends on what they
23 received. But, yes, if you get the underlying
24 information, that's great. But if the -- but
25 the score is what is driving whether or not it

1 DONALD C. STONE

2 was compliant or not. That's where the
3 disconnect is on that. You can have the
4 information and the information could be saying
5 whatever about the fund which could be good,
6 not good, whatever, but the -- what made it
7 compliant or not was the score that it got.
8 They didn't want to see the score. You can
9 have a fund that was actually okay, but if it
10 had a bad score then it would be showing as not
11 okay.

12 So I think the process is --

13 Q. Okay. Do you take issue with the
14 fact that the committee wanted to evaluate the
15 underlying quantitative metrics independently
16 on their own as opposed to looking at a score
17 irrespective of the IPS just as general matter?
18 Do you take issue with that?

19 A. I don't have an issue with them
20 wanting to look at the information, the underlying
21 information about each of the funds. That is
22 not an issue. But I would expect them to look
23 at it in relationship to the IPS. To not have
24 the IPS as part of that conversation I think is
25 a problem.

1 DONALD C. STONE

2 Q. We will come back to that later.
3 I want to focus on 2020. Do you have any
4 specific issues with the process that the
5 committee undertook with respect to evaluating
6 the Freedom Funds?

7 A. Again, I would say I would like to
8 look at my report and --

9 Q. Sir, you can look at your report
10 any time you like.

11 A. I'm sorry?

12 Q. You can look at your report any
13 time you like.

14 A. I understand that. If I'm having
15 to search for where something is, it could take
16 some time to find some of those things as
17 opposed to you have some very specific things
18 in mind and I think it will serve the purpose
19 of everybody better if you'd direct me where
20 you'd like me to look and comment. I'm happy
21 to do that.

22 Q. I understand, I will. I'm just
23 trying to understand based on your knowledge
24 sitting here today whether or not you know
25 there is anything in 2020 specific.

1 DONALD C. STONE

2 You mentioned in 2020 a new IPS
3 was adopted, isn't that correct?

4 A. That's correct.

5 Q. Do you have any recollection of
6 whether or not that IPS had any sort of scoring
7 system attached to it?

8 A. I believe it did, but again, I
9 would like to look at my report.

10 Q. If it did, did you look to see
11 whether or not the committee from 2020 forward
12 received information that was consistent with
13 the scoring system in the 2020 IPS?

14 A. No, I don't think so.

15 Q. Why not?

16 A. Well, again, at that point the
17 Freedom Funds were not in the mix.

18 Q. Okay. So it is your opinion that
19 as of 2020 the Freedom Funds were not in the
20 mix and therefore you did not need to review
21 the committee's fiduciary process from 2020
22 forward?

23 MR. ROBERTS: Objection to the
24 form, misstates testimony.

25 A. I was not asked to review from

1 DONALD C. STONE

2 that point forward for to '24 to have an
3 opinion about that because the funds that were
4 at issue were not in the plan.

5 Q. If the funds were in the plan past
6 2020, would there be a reason that you wouldn't
7 look to see if the scoring system matched with
8 the criteria that the fiduciary committee was
9 evaluating?

10 A. No.

11 Q. So you would agree that you should
12 have done that if the Freedom Funds were still
13 in the plan as of 2020?

14 A. Yes.

15 Q. Do you know if there are any other
16 challenged investments in this case?

17 A. The only ones that I'm aware of
18 were the Freedom Funds at this point.

19 Q. So Mr. Stone, do you have an
20 opinion, based on your review of the materials
21 in your report, that there should have been
22 action with respect to the Freedom Funds by the
23 committee?

24 A. Yes. I think that as of the end
25 of -- as of the fourth quarter 2015 they would

1 DONALD C. STONE

2 have been on -- they could have been a watch
3 for four quarters at least at that point. In
4 fact I think that would have been a fifth
5 quarter at that point. I think, again, there
6 should have been a process where the committee
7 took a very hard look at whether those funds
8 should have been removed or should have stayed
9 in the plan and there should have been
10 documentation either way on what conclusion
11 they reached and why.

12 Q. Do you have an opinion that they
13 should have removed the Freedom Funds as of a
14 certain date?

15 A. Again, I think they needed to do
16 the analysis to determine -- so my remit here
17 was to talk about fiduciary process. I didn't
18 do a deep dive and your question is assuming
19 that I went out and did independent analysis of
20 the Freedom Funds during that particular period
21 and ran all the analytics and everything and I
22 did not do that. I was not asked to do that.

23 Q. I understand --

24 A. So it goes back again to the point
25 I was -- my role as an expert is to talk about

1 DONALD C. STONE

2 fiduciary process, not necessarily to provide
3 in-depth information about any particular
4 investment at that time.

5 Q. But you mentioned the fourth
6 quarter of 2015, you made a specific very
7 specific reference to that and underperformance.
8 So what I'm asking you is, do you have an
9 opinion as to the fiduciary process, whether or
10 not the process should have -- my question is,
11 you mentioned fourth quarter of 2015?

12 A. Yes.

13 Q. So what is the issue with the
14 fourth quarter of 2015 that you were referring
15 to?

16 A. The number of quarters that the
17 fund could have potentially been on watch for
18 underperformance.

19 Q. So is it your opinion that it
20 should have been on watch or that it could have
21 potentially been on watch?

22 A. I think it should have been on
23 watch and I think the committee should have
24 determined that, but they did not put it on
25 watch or performance. In fact they -- it gets

DONALD C. STONE

worse, because they took it off of watch, it had been on watch for the fact that some of funds, underlying funds did not have a three year history. And when those funds got a three year history, irrespective of the fact that the funds were underperforming relative to the benchmark, they took it off of watch at that point which I think is -- sends a very strange signal and is something that I can't recall seeing in my past and everything that you would take a fund, even if it is on watch for a different reason, at the time that you start -- you want to remove it from being on watch in this case for some of the underlying funds not having a performance history.

I cannot recall seeing a fund come off of watch that in fact has a long period of underperformance at that point. I think that just speaks to me that they weren't looking at the underperformance at all and it could get kind of crazy if the next quarter they decide to look at it and say oh, this underperformance is really a problem we need to put it on watch again. I think that process is -- that's a bit

1 DONALD C. STONE

2 of a mess.

3 Q. So we will get to some of those
4 details. I'm just trying to hone in on whether
5 or not you have an opinion that the committee
6 should have removed the Freedom Funds from the
7 plan lineup at a certain period of time?

8 A. I think they should have done -- I
9 keep coming back to this. I haven't done -- I
10 don't have all of that analytic data in front
11 of me. I know the number of quarters that it
12 was underperforming and I know by how much
13 because that is in the report here. But what I
14 don't have, I don't have the information to
15 make the determination that you're asking me to
16 just blithely say it should have been removed.

17 What I can say, it should have
18 been subject to substantially more analytical
19 analysis which might have resulted in it being
20 removed, but I can't say at this point because
21 the work wasn't done.

22 MS. ENGELMAN: So let's pull up the
23 IPS, the 2015 IPS Maria.

24 (Exhibit 2 for identification, 2015
25 IPS.)

1 DONALD C. STONE

2 A. I assume it is still loading.

3 Q. It usually takes a minute. I'll
4 get to that in a second. I'm going to turn
5 your attention to --

6 MR. ROBERTS: It looks like it is
7 up now.

8 Q. One question for you, Mr. Stone.
9 You mentioned some draft IPSs. Is it your view
10 that those were operative or inoperative?

11 A. They were not operative in my view
12 and I think a couple of committee members
13 specifically said they, in their deposition,
14 they did not think it was operative. And I
15 would say it was not operative because it was
16 never signed.

17 Q. You make some references to the
18 draft IPSs in your report. Why is it did you
19 do so if they are not operative in your view?

20 A. Because I think they were used by
21 the advisor to generate their reporting.

22 Q. Do you see it Mr. Stone?

23 A. The IPS?

24 Q. Yes.

25 A. I have it open.

1 DONALD C. STONE

2 Q. This is the 2015 IPS; correct?

3 A. Yes.

4 Q. And in your view this was in
5 operation until the 2020 version went into
6 effect; is that right?

7 A. That would be correct.

8 Q. And you had an opportunity to
9 review this IPS as part of drafting your
10 report?

11 A. I did.

12 Q. Generally speaking, is it a pretty
13 typical IPS in your experience?

14 A. For the most part, yeah, I would
15 say, yeah, they all vary a little bit, but for
16 the most part it is fairly typical, yes.

17 Q. Is there anything that you can
18 identify that is not typical, in your experience?

19 A. No, I was just thinking about
20 that. I don't mean to say there is something
21 atypical. I think the -- as we go through it,
22 I can't think of anything that is a major
23 problem or issue with the 2015 IPS, no.

24 Q. So you opine -- let's just take a
25 step back here. If we turn to page 2 of the

1 DONALD C. STONE

2 IPS.

3 A. Okay.

4 Q. That last paragraph where it says
5 "The purpose of the IPS is to provide the plan
6 and fiduciaries with guidelines which will
7 establish the plan's investment objectives and
8 the process for promoting these objectives."
9 Do you see that?

10 A. I do.

11 Q. I think you testified earlier that
12 you agree that the IPS is a guideline for the
13 committee?

14 A. Yes, I think I testified that in
15 general it's a guidepost that the committee
16 uses to have a consistent process. But there
17 are parts of it that are obligatory and parts
18 that are not obligatory and subject to the
19 discretion of the committee members.

20 Again, this gets back to the
21 language that we talked about earlier. If it
22 says will, then I think they have to follow it.
23 That is what will means. If it says may, then
24 that obviously applies discretion on the part
25 of the committee.

1 DONALD C. STONE

2 Q. So if you can turn to page 12 of
3 the IPS. Are you there?

4 A. The Bates number seems to be right
5 on top of it, so I'm just -- tell me what it
6 says at the top of the page and I will be sure
7 that I'm on the right one.

8 Q. I'm looking at "Investment
9 Objectives Criteria for Review and Review
10 Processes".

11 A. Okay, that is what I'm on.

12 Q. "Performance Evaluation Criteria."
13 Are you with me?

14 A. I am.

15 Q. The second sentence says, "To
16 address this the committee will monitor the
17 plan's investment performance on at least an
18 annual basis and evaluate each of the
19 investment opportunities pursuant to the
20 guidelines detailed herein." Do you see that?

21 A. I do.

22 Q. Do you agree with me that the
23 committee monitored the plan's investment
24 options more than on an annual basis?

25 A. Yes.

DONALD C. STONE

Q. Then it says, "Performance evaluation will include, but not be limited to, comparisons to appropriate benchmark, indexes and peer group comparisons." Do you see that?

A. I do.

Q. Do you agree with me that the committee evaluated performance and the IPS mandated that performance be evaluated not just on benchmark, but on peer group comparisons and other factors?

A. Yes.

Q. Do you see the next sentence where it says, "Performance will be measured by comparing rates of return to appropriate market indexes and peer groups for the most recent quarter, year to date, one year and three year periods and longer periods where available." Do you see that?

A. But that is not the next sentence, that was the next -- that was another paragraph down.

MS. ENGELMAN: It is saying my internet connection is unstable, can we take five.

1 DONALD C. STONE

2 THE VIDEOGRAPHER: The time is 7:47
3 and we are off the record.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time is 8:01
6 and we are on the record.

7 MS. ENGELMAN: Bill, can you tell
8 me the last thing that you got.

9 (Requested portion of record read.)

10 BY MS. ENGELMAN:

11 Q. You see it in the IPS, is that
12 correct, on the page?

13 A. I do.

14 Q. So then we look at -- if we go to
15 the next page, Mr. Stone, is the investment
16 watch list page.

17 A. I'm there.

18 Q. The first sentence says, "The
19 committee may place an investment option on
20 monitor alert status and conduct a thorough
21 review analysis of the investment options." Do
22 you see that?

23 A. I do.

24 Q. Do you agree that the committee
25 has discretion as to whether or not to place an

DONALD C. STONE

investment option on monitor alert status?

A. That's their job is to evaluate that.

Q. Then is --

A. But here is where the IPS gets a little funky. If you go back to the previous page. In the second paragraph it says, "When a fund fails to achieve its stated objective, the reasons for the failure will be evaluated and the committee shall determine whether the option shall remain, be frozen or replaced."

So that doesn't quite sync up with the other page. That gets back to kind of what I've been saying all along which is they actually need to go and determine the reasons for the failure needs to be evaluated.

That is not quite the same as saying you don't have to do anything with it, as I think you were alluding to on the subsequent page.

Q. What does the stated objectives mean to you?

A. The stated objectives of the fund?

Q. Correct.

1 DONALD C. STONE

2 A. Not of the committee or whatever?

3 Q. Well, it says "When a fund fails
4 to achieve its stated objectives." That is the
5 sentence that you just quoted; is that correct?

6 A. Yes.

7 Q. Do you know what the stated
8 objectives of the target date funds are, the
9 Fidelity Freedom target date funds are?

10 A. Well I don't know that it's
11 necessarily the stated objectives of what, in
12 this case, what Fidelity would say, but I think
13 it probably refers to the stated objectives
14 that the committee has for the plan.

15 So that goes back to where
16 does it rank, its having a competitive return
17 and blah, blah, blah, okay.

18 Q. That's not what this sentence
19 says. This sentence says, "When a fund fails
20 to achieve its stated objectives."

21 A. Well, its stated objectives may --
22 I read that to refer to its, for example, its
23 performance relative to the IPS standards.

24 Q. Is that what that says there?

25 A. That's what I'm reading it to

1 DONALD C. STONE

2 mean, okay.

3 Q. But you agree with me it says when
4 a fund fails to achieve its stated objectives,
5 correct?

6 A. Correct, you're having a different
7 definition of what its stated objectives are.
8 We are disagreeing about that.

9 Q. So we have a grammatical
10 disagreement about how to read a sentence?

11 MR. ROBERTS: Objection to the
12 form.

13 A. I'm say it is not very clear
14 because you think it refers to what Fidelity
15 says about the fund and I'm saying I think this
16 is all in language within the IPS itself. I
17 don't think -- if they had referred to what the
18 investment manager's stated objective is, that
19 would have been probably a different
20 conversation. But I'm reading -- I guess that
21 is what we get with indefinite pronouns like
22 its.

23 I read it as being a reference
24 back to the IPS and the objectives that the
25 committee has for the funds in the plan and not

1 DONALD C. STONE

2 anything that Fidelity may have as an
3 objective.

4 Q. Would you agree with me that
5 the objectives of a target date funds are to
6 meet the needs of retirement for individuals
7 invested in the target date fund?

8 A. Yes, I mean there is nothing --
9 it's a rather anodyne statement. You can't
10 argue with that.

11 Q. If we turn back to the watch list
12 page, Mr. Stone.

13 A. Yes.

14 Q. The second sentence says, 'The
15 committee may consider the following criteria
16 when placing a fund on monitor or alert status?
17 Do you agree with that?

18 A. Again, this goes back to why we
19 went to the previous page. I'm not sure this
20 language syncs up with what the previous page
21 says.

22 Q. Okay, just to be clear, what is it
23 exactly -- what exactly in this previous page
24 do you think does not sync up with that page?

25 A. So it says, "Thus, when a fund

1 DONALD C. STONE

2 fails to achieve its stated objectives, the
3 reasons for the failure will be evaluated and
4 the committee shall determine whether the
5 options shall remain, be frozen or replaced."

6 That contradicts what it says on
7 the subsequent page which is the committee may
8 do any of these following things.

9 So I don't think those two sync
10 up. I don't think the IPS is written very
11 tightly in that regard. Those two shouldn't be
12 out of alignment with each other.

13 Q. Do you agree with me that the
14 sentence that says "When a fund fails to
15 achieve its it stated objectives the reasons
16 for failure will be evaluated."?

17 A. Yes.

18 Q. Strike that.

19 If you move to the second, the
20 page that I was on in the investment watch list
21 criteria page.

22 A. Okay.

23 Q. You see the list of options or
24 list of criteria that the committee may
25 consider, do you see that?

1 DONALD C. STONE

2 A. Yes.

3 Q. Do you see anywhere in here where
4 it says that a consideration is the three and
5 five-year performance against benchmark?

6 (Witness reviewing document.)

7 A. I think that is another strange
8 thing about it. It is talking about -- so this
9 is where -- this is another thing that is in my
10 report. The IPS does not mention performance
11 at all in these particular criteria, which is
12 extremely strange that in a watch list criteria
13 you would not mention performance versus a
14 benchmark.

15 Q. You're incorrect that it doesn't
16 mention performance at all. The first three
17 bullets are performance criteria; correct?

18 A. It talks about against a peer
19 group, which is fine, okay. Risk adjusted
20 return and they talk about the Information
21 Ratio. All of which is fine. Okay, I'm just
22 saying I've never seen an IPS that doesn't go
23 and have as potential monitoring -- potential
24 watch issues the performance of the fund
25 against the benchmark. I've never seen that in

1 DONALD C. STONE

2 my 40 years.

3 Q. So you agree with me that it is
4 not listed here in this criteria?

5 A. It is not listed, no. And it was
6 later on added in I think the draft of the 2017
7 IPS which was not adopted, but I think they
8 realized they left it out.

9 Q. Do you know whether it is included
10 in the 2020 IPS?

11 A. Not off the top of my head. I
12 have to look at it.

13 Q. When you were preparing your
14 report, did you look to make that determination?

15 A. I looked at the '15, I look at the
16 '17, I look at '19, which was eventually adopted
17 and I looked at the signed 2020 as well. But
18 I'm not going to remember everything off the
19 top of my head at this particular point.

20 Q. My question is, do you remember
21 looking particularly for the issue of whether
22 or not the inclusion of the benchmark was
23 included in 2020 adopted IPS?

24 A. I think I looked for whether it
25 was included in later versions of the IPS. I'm

1 DONALD C. STONE

2 sure I did.

3 Q. When we go back to the earlier
4 page 12 which is the performance evaluation
5 criteria, is it your view that the plan objectives
6 were for the Freedom Funds to outperform its
7 benchmark on the three and five-year period?
8 Does it state that somewhere in the IPS?

9 A. Where are you looking?

10 Q. You were focused on this second
11 sentence. In the second paragraph in the
12 performance evaluation criteria when it says,
13 "When a fund fails to achieve its stated
14 objectives" and your testimony is that that
15 relates to the plan's objectives for a fund; is
16 that correct?

17 A. Correct.

18 Q. Is it your belief that the plan's
19 objectives for the Freedom Funds were for it to
20 outperform its benchmark on a three and
21 five-year basis?

22 A. No, I don't think it said that.

23 Q. Okay. If we turn back to the
24 investment watch list process.

25 A. Okay.

DONALD C. STONE

Q. The bottom paragraph it says, "Once an investment option has been assigned a status of monitor, it should remain with the status for up to four consecutive quarters. Without documented approving on the underlying criteria, it will be advanced to a status of alert no later than the fifth consecutive quarter of underperformance." Do you see that?

A. I do.

Q. Do you agree if there is an improvement of the underlying criteria, the IPS does not mandate an advancement to alert status in the fifth consecutive quarter?

A. Let me read that again.

(Witness reviewing document.)

A. So I think what that is saying is -- what I read it as saying is that if it doesn't improve, then it is going to go to the alert status no later than the fifth consecutive quarter which to me would also say it could go to an alert status earlier. And I'm not sure that it -- it doesn't really speak to the issue of not having gone on the watch list at that point or in the monitor.

1 DONALD C. STONE

2 Q. But you agree with me if there is
3 improvement, the IPS does not mandate it be
4 advanced alert status; correct?

5 A. That would be correct.

6 Q. The second to last sentence says,
7 "The committee at its discretion may change an
8 investment status outside of these standards as
9 each fund is separately evaluated." Do you see
10 that?

11 A. I do.

12 Q. Is that pretty typical for the IPS
13 to allow discretion of that nature?

14 A. Well, again, as long as it is
15 consistent with other parts of the IPS, yes.

16 Q. You can put that document down for
17 now.

18 I want to turn back to your
19 report. Give me a second to find the paragraph.
20 So paragraph 34 of your report, Mr. Stone, if
21 you could turn to that, please?

22 A. Okay, I'm on that page.

23 Q. So you state in paragraph 34,
24 "On at least a quarterly basis, fiduciaries
25 should review and analyze the impact of

1 DONALD C. STONE

2 economic developments on the plan, the
3 performance of each plan investment across all
4 relevant metrics, and the qualitative and
5 quantitative factors relevant to the
6 fiduciary's decision to retain or replace any
7 investments on a watch list." Do you see that?

8 A. I do.

9 Q. So it's your testimony that not a
10 single metric is informative necessarily of a
11 fiduciary's decision, but they must consider
12 all of the qualitative and quantitative
13 factors?

14 A. Well, I think that is misreading
15 what I wrote there. Obviously what we are
16 saying -- what I'm saying, the fiduciaries want
17 to look at all of it. But that doesn't speak
18 to whether one of them should be called out and
19 one of them might be enough to trigger taking a
20 look at everything.

21 It says that the fiduciaries
22 should be looking at all of these things. This
23 is, you know, to retain or replace something on
24 the watch list. It says you should look at all
25 of them, which is correct, okay.

1 DONALD C. STONE

2 Q. Okay, got it. So the last
3 sentence it says, "Consistent underperformance
4 over longer periods is usually grounds for
5 removal." Do you see that?

6 A. I do.

7 Q. What do you mean by consistent
8 underperformance?

9 A. This is a generalized statement
10 which could be somewhat different from one plan
11 versus another, depending on what their IPS
12 says. But generally speaking, consistent
13 underperformance means over an extended period
14 of time to be defined by, again, each committee
15 may define it slightly differently.

16 I will tell you that generally in
17 the industry more often than not it is
18 somewhere between four and six quarters,
19 although that is not a hard rule, because it's
20 this is a -- because it is a -- it's not a
21 cookie cutter decision as to how you do this.
22 You're looking at all factors.

23 You brought up before, you're one
24 basis point under. Well, that's a very
25 different fact pattern than if you're a hundred

DONALD C. STONE

basis points under. So you're not going to necessarily make the same decision based on that.

So consistent underperformance means over an extended period of time. Let's say somewhere between four and six quarters typically in the industry. I think that will generally be agreed upon. And that's usually grounds for removal. Again "usually" key word there. There are circumstances when that might not be the case. There are circumstances where it definitely would be the case. So committees have to use their judgment. It's not a check the box approach.

Q. When you're talking about underperformance there, are you talking about as compared to a specific metric?

A. I'm talking about underperformance may be compared to -- it could be across any of those metrics if it is underperforming.

Q. Let's turn to page 35 of your report.

A. Okay.

Q. You have given an opinion,

1 DONALD C. STONE

2 Mr. Stone, that the committee meeting minutes
3 by this committee were, I'm using your words,
4 "woefully inadequate and cursory." Is that
5 correct?

6 A. Correct.

7 Q. Did you review in full the
8 entirety of the meeting minutes between 2014
9 and 2024?

10 A. I think I reviewed all of those,
11 yes.

12 Q. Is it your opinion that every
13 single one of those meeting minutes is woefully
14 inadequate and cursory?

15 A. No, that is not my opinion. I
16 didn't single out -- any particular one my
17 might be fine. This is a general observation.

18 Q. I'm trying to understand how you
19 reached the conclusion that there is a general
20 observation if all of them are not cursory and
21 woefully inadequate, how many are?

22 A. You can't have -- you doesn't
23 necessary have to be every single one as
24 woefully inadequate. Some of those meeting
25 minutes are rather brief and they seem

DONALD C. STONE

perfectly fine.

Part of the issue here is the minutes were taken by the advisor, they weren't taken by someone on the committee. So that is not unusual. I'm not faulting that per se.

What the committee meetings are is they're the voice of the advisor filtering what the committee talked about or said as opposed to -- so there are some of the substantive decisions that are not -- it is not clear how they made some of those decisions. So when I say this is a general comment, you don't have to have every one be wrong for it to be an issue in general. That's not -- that was not my claim that every single minute was wrong and should have been redone or whatever.

I think there is a generalized problem that they seem to be -- it's not clear when read through them exactly what the rationalization is for some of the decisions that are made. They are pretty anodyne. They are pretty vanilla. They don't really give me a sense of how did this decision get made. What were the issues that were concerned.

1 DONALD C. STONE

2 Q. As a 321 consultant, did you ever
3 take the minutes for any of the committees with
4 which you worked?

5 A. I did. And as I said, that is not
6 unusual in the industry. It is not -- it doesn't always
7 happen that way, but it is certainly not unusual.

8 Q. How many clients with which you
9 worked did you take the minutes approximately?

10 A. Probably a third, maybe it might
11 have been slightly more than a third. At least
12 a third.

13 Q. Do you have an understanding in
14 this case that the committee members reviewed
15 and commented on the minutes and revised them
16 as appropriate?

17 A. I do. I do recognize that, yes.

18 Q. You testified earlier that some of
19 the committee minutes were brief but otherwise
20 fine. Do you remember that testimony?

21 A. Yeah, I said that just a minute
22 ago, yes.

23 Q. What does that mean?

24 A. So it depends on -- that was just
25 an offhand comment. But it depends on if there

DONALD C. STONE

were any significant issues to be discussed and whatever, if there weren't and it was a short meeting or if it was an administrative meeting that didn't deal with the investments, that may have been fine. I'm not referring to a particular set of minutes in this particular case.

What I'm saying, when there were investment decisions that needed to be made, it wasn't always clear what the rationale was and it wasn't very clear what other discussions may have gone on and whether there were any concerns by any of the committee members that weren't captured.

Q. For each of those minutes which you identified a problem, did you include those in your report?

A. I didn't single out particular series of minutes, no.

Q. Why not?

A. It never crossed my mind. In general the minutes were taken the same way each time. So in general I felt they were deficient for the reasons that I gave.

1 DONALD C. STONE

2 Q. Well, you testified earlier they
3 were only deficient in so far as the -- you
4 didn't believe the rationale was adequately
5 captured, correct?

6 A. That happens in a lot of cases
7 when something is being monitored. There is
8 always something going on. In most of the
9 minutes there is something going on.

10 Q. Do you have an approximation of
11 how many -- first of all, do you know how many
12 minutes you reviewed?

13 A. I don't have the exact number, no.
14 There was a lot of minutes, but I don't remember the
15 exact number.

16 Q. I'm going to represent to you that
17 according to your report in the litigation
18 documents you reviewed 37 minutes.

19 A. Okay.

20 Q. Do you have any sense of how many
21 of those 37 you took issue with?

22 A. No.

23 Q. So do you agree with me that you
24 provided one example in your report of a
25 deficient meeting minute?

1 DONALD C. STONE

2 A. I'd have to look at that, but that
3 sounds correct.

4 Q. Do you have any -- did you decide
5 which example would be included in your report?

6 A. It was part of the conversation
7 that I had with counsel. I don't know exactly
8 whether I brought it up, they brought it up, I
9 don't know.

10 Q. So it's your testimony it could
11 have been counsel deciding which example would
12 be in your report?

13 A. No, they didn't decide which
14 example. You're misspeaking what I said. It
15 is my report at the end of the day. I either
16 agreed with it or I didn't. I don't know how a
17 particular conversation went that would have
18 taken place weeks ago at this point. That's
19 not realistic.

20 Q. But you don't know if you took
21 issue with half of the minutes, a third of the
22 minutes, two of the minutes, you don't know?

23 A. Now we could go through them all
24 right now and I will tell you as we go. We'll
25 will go through all 37. We could do that.

1 DONALD C. STONE

2 Q. You testified that you reviewed
3 every single one of the minutes in preparation
4 for your report. Your report contains one
5 example of a so-called deficient meeting and
6 I'm asking what other meeting minutes are
7 deficient in your view. You reviewed them.

8 A. Okay, but I don't remember which
9 particular quarter here, there or the other.
10 If we looked through them I could give you that
11 answer.

12 Q. If the majority of the meeting
13 minutes are deficient, why didn't you include
14 more examples of those deficiencies?

15 A. I didn't include every single
16 example of everything in the report. I can't
17 recall ever seeing one of these reports where
18 every single possible thing is capture because
19 it is way too long.

20 If the bottom line is I didn't, I
21 think as a general process as I read through
22 the reports and, again, in a lot of cases it
23 just strikes me there is stuff that is missing.
24 When I read through it there are things that
25 simply aren't there.

1 DONALD C. STONE

2 Q. Can you identify any of those
3 things today?

4 A. If I read through the minutes I
5 can.

6 Q. Did you read through the minutes
7 in advance of your deposition today?

8 A. I did not read through them in the
9 last -- I read through some of them yesterday,
10 but I didn't read through them this morning.

11 Q. So based on your review yesterday,
12 do have any recollection of other things that
13 are missing from the minutes that you did not
14 include in your report?

15 A. As I read through the minutes,
16 what comes across is it's very -- it's, as I
17 said before, it's anodyne, it doesn't tell me
18 the rationale behind a lot of decisionmaking.

19 Q. What decision, you look at them
20 yesterday, what ones?

21 MR. ROBERTS: Are you asking about
22 a particular document or are you asking in
23 the aggregate of 37? If you want to show
24 him a document you can do that.

25 MS. ENGELMAN: I'm asking what he

1 DONALD C. STONE

2 remembers from his review of the minutes
3 yesterday.

4 A. At this hour in the evening,
5 frankly I don't remember any specific minute,
6 period. I can look through them and I'm happy
7 to do that. For me to say I have a memory, I
8 remember the meeting minutes from June of 2017,
9 no, I'm not going to say that, that wouldn't be
10 accurate.

11 Q. Is it your opinion that the
12 meeting minutes from 2020 forward were
13 compliant with the IPS?

14 A. I think it is the same issue that
15 goes forward. Okay.

16 Q. You note in your report that the
17 IPS was amended to reflect what needed to be
18 included in the minutes. Do you recall that?

19 A. I do.

20 Q. Do you take issue with that
21 decision? Is that uncommon in the industry to
22 make a change to the IPS in terms of what needs
23 to be reflected in the minutes?

24 A. You asked two different questions.
25 That's a compound question. It is not uncommon

1 DONALD C. STONE

2 for an IPS to be modified over time. In fact
3 it is fairly common.

4 Q. Okay, let's turn to paragraph 86
5 of your report.

6 A. 86, okay.

7 Q. So you say here, "This is a
8 glaring example of deficiency of the meeting
9 minutes." Right? And this is the fact that
10 the Freedom Funds were on monitor status in
11 February, 2016?

12 A. Correct.

13 Q. Do you see that?

14 A. Yes.

15 Q. You say here "As of the fourth
16 quarter 2015 meeting, the Freedom Funds had
17 been on monitor status for four consecutive
18 quarters." Do you see that?

19 A. Yes.

20 Q. Then you say, "The quarterly
21 investment review presented at the meeting also
22 detailed that the Freedom Funds were
23 underperforming their benchmarks for a three and
24 five-year period." Do you see that?

25 A. I do.

1 DONALD C. STONE

2 Q. Then it says, "In accordance with
3 the criteria of the 2015 IPS, if an investment
4 on monitor status for four consecutive quarters
5 shows no signs of improvement in the underlying
6 criteria, it is to be advanced to alert status
7 absent a documented decision by the committee
8 to change an investment status." Do you see
9 that?

10 A. I do.

11 Q. We looked at the 2015 IPS earlier
12 and you agreed with me that the performance
13 against benchmark for the three and five-year
14 period is not included as a monitoring criteria
15 in the 2015 IPS; correct?

16 A. Correct.

17 Q. Then it says, "The minutes of the
18 fourth quarter 2015 committee meeting held on
19 February 15th, 2015 reflected a number of
20 investments were discussed in-depth to
21 determine monitor status." Then it goes on to
22 say what the minutes reported. Right?

23 A. Yes.

24 Q. I'm going to the middle of the
25 paragraph, paragraph 88. "Given that the

DONALD C. STONE

Freedom Funds continue to underperform their benchmark and that the advisor and the committee noted that no significant changes to the suite had occurred during 2015, it is entirely unclear how the committee arrived at its decision to remove the Freedom Funds from monitor status at this time." Do you see that?

A. I do.

Q. I believe you testified earlier that the reason that you're aware that the reason that the Freedom Funds were on monitor status as of this time was the lack of performance data for some of underlying funds; is that right?

A. That was the reason that they gave, yes.

Q. Were you aware of that at the time that you wrote this report?

A. Yes.

Q. So when you say that given the Freedom Funds continued to underperform their benchmark and that the advisor committee noted no significant changes to the fund suite occurred in 2015, were you aware at that point

1 DONALD C. STONE

2 that you wrote the report that the Freedom
3 Funds were not on monitor status for
4 performance?

5 A. They should have been.

6 Q. But they weren't; is that correct?

7 A. Well, and that's a flaw by the
8 committee, that they were not on watch status
9 at that point. That was -- and to take them
10 off monitor in general.

11 When you go on monitor, to come
12 off monitor says that all the issues are
13 resolved. That is typically the way that you
14 think of that. When they came off monitor all
15 the issues weren't resolved. They still had
16 significant underperformance issues despite the
17 fact that the IPS left that language out.

18 So my point is, I think the
19 committee, regardless of whether -- because the
20 committee has the flexibility to put it on
21 monitor for any reason they want, and it's
22 incomprehensible to me that they come and take
23 it off of monitor when it is still underperforming.

24 They could have gone and said,
25 okay, we are taking it off of watch for the

1 DONALD C. STONE

2 three year number, but at the same time it would
3 have made sense they we are going to keep it on
4 watch because it is still underperforming. We
5 are looking at it in a different lens at this
6 point.

7 I think the committee -- I don't
8 know if they just weren't paying attention or
9 exactly what happened that they would take
10 something off monitor when it's underperforming.
11 Regardless whether it is specifically a bullet
12 point in that 2015 IPS or not.

13 Q. So I guess that's my question.
14 What is the basis for your opinion that it
15 should have been on monitor as of -- for the
16 poor performance, what is basis of your
17 opinion?

18 A. Because I think the committee has
19 a duty of loyalty to the plan to look after the
20 best interest of the participants. And I don't
21 think they were making a good judgment in that
22 affect. Okay. It is incomprehensible to me.

23 Q. Do you know what the
24 underperformance was at this time period
25 relative to benchmark?

1 DONALD C. STONE

2 A. There is a list that gives the
3 underperformance fund vintage by vintage. I
4 don't have it right in front of me. I looked at it
5 earlier today, but I don't have it in front of
6 me at the moment. It varied from being just
7 slightly underperforming to being fairly
8 substantially underperforming. So it varied
9 depending on the vintage.

10 Q. So was this underperformance
11 compared to index or compared to benchmark or
12 compare to something else?

13 A. I believe that was compared to the
14 index.

15 Q. Do you know how the target date
16 funds were comparing as to peer group during
17 the time period?

18 A. They were showing up a little
19 differently. You're talking about the liber
20 list?

21 Q. I'm asking you if you know.

22 A. The peer group performance looked
23 better than against the benchmark.

24 Q. So is it plausible that the
25 committee looked at the peer group performance

1 DONALD C. STONE

2 and decided that it didn't need to be on monitor
3 status because the performance against peer
4 group?

5 A. But they didn't say that. This
6 goes back to the minutes not talking about the
7 rationale employed.

8 Q. Do you have any sense of whether
9 or not the performance improved during the time
10 they were stated on monitor until the time they
11 went off monitor?

12 A. I think it varied depending on the
13 vantage.

14 Q. Do you know one way or another?

15 A. And depending on the quarter.
16 There was some improvement during I think part
17 of that period of time, but by the same token
18 they were still underperforming. So they never
19 got above the waterline.

20 Q. You talk about in your report that
21 the Freedom Funds were the plan QDIA; is that
22 correct?

23 A. Yes.

24 Q. And that there should be some sort
25 of heightened scrutiny around the plan's QDIA;

1 DONALD C. STONE

2 is that correct

3 A. Correct.

4 Q. What do you mean by heightened
5 scrutiny?

6 A. Well, by heightened scrutiny I
7 mean, usually QDIA holds a large percentage, if
8 not the majority percentage, of all the assets
9 in the plan. So I think that the -- so just by
10 share looking at raw numbers and number of
11 participants typically involved as well that --
12 this is not a minor thing. It is not like it's
13 a fund that is held -- some kind of select fund
14 that is held by three individuals who happen to
15 be in a C suite. It's a very different thing.

16 They are people who quite often
17 have been defaulted, they tend to be
18 unsophisticated people, they tend to be
19 unengaged, their money is going into a suite of
20 funds that they don't actually know much about
21 and they are relying upon the plan fiduciaries
22 to look after their interest. So I think that
23 is why I say a heightened level of scrutiny is
24 reasonable.

25 Q. My question was a little

1 DONALD C. STONE

2 different. What is the heightened level of
3 scrutiny? What does that entail?

4 A. The heightened level of scrutiny,
5 it looks at it more carefully to be sensitive
6 to the fact that you don't go and -- in this
7 case you don't go and remove it because it
8 doesn't happen to show up in the 2015 IPS to
9 look against benchmark. You don't remove it
10 from a watch list because it is still
11 underperforming. You try to understand what's
12 driving that underperformance and I don't see
13 that anywhere they spent time doing that.

14 Q. Did you always do that in your
15 role as a 321 investment advisor?

16 A. Of course.

17 Q. Mr. Stone, you opine in your
18 report that the committee failed to review the
19 services provided by Ascende and QPA; is that
20 correct?

21 A. That's correct.

22 Q. Is it your opinion that the
23 committee was under obligation to do an RFP for
24 services by another investment consultant?

25 A. I don't think it was necessarily,

DONALD C. STONE

although that would be the better way to go. An RFP per se, like I said, I think that would be the preferred way to go, but they weren't under a, quote, obligation to do just an RFP. They could have done an RFI, they could have had a -- they could have hired somebody to a benchmarking study of advisors. An RFP would certainly be the preferred way because you get so much more information, much richer.

The Department of Labor specifically does call out -- they don't call out an RFP, of course, but they do call out that you have to have a process for reviewing your service providers. And that would certainly include your investment advisor.

Q. But you agree that the Department of Labor doesn't require any specific manner in which to review your investment advisor; is that correct?

A. The Department of Labor doesn't require almost any of the things that we have been talking about, including an IPS, a charter, they don't require having a committee of multiple people. You could have an

1 DONALD C. STONE

2 individual, it is not a good process, but you
3 could do that.

4 Most of the things -- they don't
5 require looking at peer groups. They don't
6 require looking at risk adjusted returns. None
7 of this is anywhere in ERISA because it is 50
8 years old and this has been an accretive
9 process of what has been standard practice in
10 the industry over a period literally of decades.

11 So none of this stuff is -- and
12 the Department of Labor, I think, doesn't want
13 to get involved in some of the level of detail
14 in everything. I'm not sure the skill set is
15 there.

16 Q. When you were a 321 investment
17 advisor from 2002 to 2019, did you recommend to
18 your clients that they conduct an RFP or a RFI
19 for other investment consultants?

20 A. I had many of them go exactly
21 through that. I never said don't do that at
22 all.

23 Q. Did every single one of them do
24 that annually?

25 A. First of all, you wouldn't do it

DONALD C. STONE

annually. You wouldn't do an RFP annually. But not every single one of them, as I recall, actually did it. But those were conversations that we had as part of the fiduciary training that your service providers, and that would have included us sitting in the room, you ought to be out periodically going through a formal process to determine if you have the appropriate choice.

Q. So tell me what specific steps you made sure they were going through -- every single one of your clients was going through a formal process to determine --

A. As I said some of them --

Q. Let me finish my question. -- to determine whether or not to continue to have their services provided by the PSA or Pavilion?

A. As I said a minute ago, not all of them chose to go through that. As a 321 I could make recommendations, I couldn't go and act for them. So not everyone of them went through a formal process. Many of them did.

Q. How many did?

A. I don't know exactly the number,

1 DONALD C. STONE

2 but it certainly would have been well over half
3 of our clients.

4 Q. For the other half you testified
5 earlier that you believe all the committees
6 that which you worked with were prudent engaged
7 in good committees. Does your answer change
8 given that they didn't go out and do a formal
9 RFP and RFI?

10 MR. ROBERTS: Objection to form.

11 A. The thing to realize is, I don't
12 even know if they did an RFP separate.
13 Sometimes they don't tell you what they're
14 doing. They don't include you in that process.
15 If they do an RFI they don't include you
16 necessarily. So there would be ones that I
17 don't know what they did. I'm not included in
18 some of those conversations or wasn't, I should
19 say, included in some of those conversations
20 depending on how the committee decided it
21 wanted to act.

22 Q. But sitting here today you're
23 aware of some of the committees in which you
24 worked where you don't know whether or not they
25 underwent any formal process for evaluating the

1 DONALD C. STONE

2 services that you were providing? You have no
3 idea one way of the other?

4 A. I don't know what process they
5 went through. I won't say they didn't go
6 through a process, but I don't know what
7 process they went through because typically the
8 existing advisor is not included in that process
9 unless it's a full blown RFP.

10 Q. If you don't know what process
11 they went through, how do you know they went
12 through a process at all?

13 A. This is really a gotcha game and
14 it is really rather childish at this hour of
15 the day.

16 My clients went through rigorous
17 training on what they should do. At the end of
18 day they needed to take the action to go
19 through a process to evaluate us. Sometimes
20 they went through a process of evaluating us
21 that we found out about after the fact.

22 Sometimes they went through a
23 process that it was quite formal with an RFP
24 which we knew about upfront. Sometimes they
25 did it through talking to their peers. There

DONALD C. STONE

were multiple ways they decided to go about that. I did not have access to all of that data.

So I can't, for example, respond to their level of prudence on that particular element because I wasn't involved in that process and I was there to provide advice not to dictate what they did.

Q. Let's turn to training. You talk about training for individuals who were onboarded on to the committee during the relevant period. Do you recall that line?

A. I do.

Q. Do you know whether any committee members were onboarded during the relevant time period in that case?

A. They talk about an informal process of onboarding that seems to come back to the conversation of being included in the quarterly investment reviews where there was some degree of fiduciary information provided. And there were I think a couple of years where there was a one-pager that I saw that bullet pointed various fiduciary things that people

1 DONALD C. STONE

2 should be aware of which I would not consider
3 anywhere near adequate fiduciary training nor
4 would anyone else that I know of consider that.

5 So I don't think -- I think a
6 couple of the numbers specifically refer to the
7 fact that they did not get specific onboarding
8 training.

9 Q. My question was a little
10 different. Do you know whether or not any
11 committee members were onboarded during the
12 relevant period in this case?

13 A. I thought I answered that. I said
14 some of them said they received -- that their
15 onboarding was getting quarterly information as
16 they were in the meetings.

17 Q. You're misunderstanding my
18 question. I'm talking about the timeframe. Do
19 you know whether or not anyone was actually
20 onboarded during the relevant time period in
21 this case?

22 A. You mean a new person entered the
23 committee?

24 Q. Yes.

25 A. Okay, I didn't understand that.

1 DONALD C. STONE

2 I'm trying to think who went --
3 there was a -- there was a change over of a
4 couple of members of the committee, I don't
5 remember the exact date, but the 2015 IPS I
6 believe was signed by a couple of people that
7 were not on the committee later.

8 Q. So you testified or paragraph 93
9 of your report, I will direct you there.

10 A. Okay, I'm there.

11 Q. You say, "Other than brief updates
12 in quarterly investment review materials
13 provided by the plan's investment advisor, no
14 formal fiduciary education materials were
15 presented to the committee prior to May 24th,
16 2021." Do you see that?

17 A. I do.

18 Q. What do you consider to be formal
19 fiduciary education?

20 A. Well, I think it's a very -- it's --
21 probably a good example would be what was
22 actually presented on May 24, 2021. It is like
23 a 22-page document that walked through a number
24 of issues. It's a question of how much you
25 want to include.

1 DONALD C. STONE

2 But the reality was that it talked
3 about a lot of different aspects, what it means
4 to be a fiduciary, how you monitor the
5 investments. It talked about appointment to
6 the committee. It talked about all the
7 different processes that you look at and how
8 you should also think about being a fiduciary.
9 So it was a pretty detailed document.

10 I don't think it was -- I probably
11 would tweak it a little bit if I were doing it
12 myself, but that is neither here nor there I
13 suppose.

14 I think it was a pretty rich and
15 robust document overall as compared to what we
16 saw prior to that period when for I think two
17 years there it was a one-page bullet pointed
18 document that I have no idea how much was --
19 what was spoken to from that and how that was
20 presented. And otherwise it was just different
21 updates during quarterly meetings which there
22 is nothing wrong with updates during quarterly
23 meetings, but it is not sufficient.

24 Q. So when you're talking about a
25 one-pager, are you talking about the fiduciary

1 DONALD C. STONE

2 essentials document, do you know?

3 A. That sounds correct.

4 Q. Do you know when that was
5 presented to the committee?

6 A. It was presented on two different
7 occasions as I recall and I don't remember the
8 exact dates.

9 Q. Was it prior to 2021?

10 A. Yes, it was.

11 Q. Your position is that is just not
12 a formal training in your view?

13 A. I think it's -- a one page bullet
14 point is not formal training in any sense of
15 the word in my mind. I think it is -- it's a
16 complicated issue and people need help in
17 understanding what they're supposed to do and
18 it's certainly not an onboarding of anybody.

19 No, I don't think it is formal
20 training at all. It didn't get into a lot of
21 different issues that I would have gone into.
22 And I don't know how much was spoken.

23 I want to add, even with the
24 bullet points, I don't know what was spoken to
25 those bullet points or not spoken to them in

1 DONALD C. STONE

2 terms of the amount of relevant detail that
3 would have been provided in terms of talking
4 about fiduciary responsibility, investment
5 monitoring and selection, you know, acting in
6 the interest of the participants as opposed to
7 the interest of the company or yourself,
8 conflicts of interest. These are pretty meaty
9 topics that require more than a single bullet
10 point on a sheet of paper.

11 Q. Understood. You don't have any
12 knowledge sitting here one way or another what
13 was actually delivered in the fiduciary
14 essentials presentation to the committee,
15 you're just going off what is included in the
16 one-pager?

17 A. That is the piece of paper that
18 apparently was given to them.

19 Q. You don't have any knowledge or
20 testimony or record of any sort regarding what
21 was actually delivered, it could have been much
22 meatier than what the one-pager suggests?

23 MR. ROBERTS: Objection.

24 A. I have no idea what was delivered.
25 I cannot imagine that you can deliver -- based

1 DONALD C. STONE

2 on those bullet points, it certainly would not
3 have been sufficient regardless of what was
4 delivered in person. No, I don't know what was
5 delivered verbally, let's say, to those bullet
6 points.

7 Q. Do you have a recollection that
8 the bullet points did cover at least at a high
9 level investment monitoring?

10 A. They did.

11 Q. So you mentioned earlier,
12 Mr. Stone, that the DOL does not require a
13 charter; is that correct?

14 A. They don't require a lot of things
15 in explicit terms, no.

16 Q. You agree with me that ERISA does
17 not require a charter of any kind?

18 A. I missed the last part of that.

19 Q. Do you agree that ERISA doesn't
20 require a charter of any kind?

21 A. A what?

22 Q. A charter of any kind.

23 A. What did you say before that?

24 Q. ERISA does not require.

25 A. That's what I missed, sorry. No

1 DONALD C. STONE

2 ERISA is not -- is not that explicit about a
3 lot of things as I said a minute ago. It
4 doesn't require a committee.

5 Q. Did every single one of the
6 clients with which you worked at both PSA and
7 Pavilion have a charter in place?

8 A. They did. I wouldn't allow them
9 not to.

10 Q. When you say charter, do you mean
11 charter or other equivalent document? I think
12 you use that in your report.

13 A. It could be an equivalent
14 document. Again, it depends on what it says in
15 the equivalent document. The IPS typically
16 reiterates some pieces of it, but there is a
17 lot of things that an IPS would not include and
18 the IPSs in this case do not include that would
19 be essential to have in a charter. It could be
20 covered in the plan document. Sometimes that
21 happens. And that's fine. My preference would
22 be for a charter, but you don't have to have a
23 charter as long as the information is conveyed
24 that needs to be conveyed.

25 Q. So let's go back to the 2015 IPS.

1 DONALD C. STONE

2 A. Let me bring that up.

3 Q. Can you identify what is missing
4 from the IPS that you would like to see in a
5 charter document?

6 A. Well there are several things that
7 are -- that jump out right from the get-go. So
8 I don't know that IPS is going to help because
9 it doesn't have anything in there about this.
10 So a charter first of all should clearly
11 delegate authority to either an individual or
12 to a committee and by that it is going to be
13 clear who the authority is that it's coming
14 from. It could be the board, it could be from
15 the CEO, it could be handled several different
16 ways. It is going to also detail what
17 authority that committee has. It is not just a
18 matter of you can monitor the investments and
19 this, that and the other.

20 Part of it is what authority don't
21 you have. Where does your committee get
22 circumscribed. In some cases a committee can
23 make decisions about certain things and that is
24 very clear. Again, that is the purpose of a
25 charter. It is very clear that this is something that

1 DONALD C. STONE

2 we can make a decision about. Here is
3 something that over here if it happens we need
4 to go and raise it to -- elevate it to another
5 level.

6 So that's not covered in the
7 investment policy statement.

8 Q. I don't want to interrupt you
9 there, but if you're done with that particular
10 thought I would like to jump in with a question
11 whenever you done with that particular thought.

12 A. The point is, I think there is a
13 number of areas that are not covered in the IPS
14 that a charter should cover that makes the
15 authority very, very clear. And I think that
16 is a very important point.

17 Q. So I want to turn your attention
18 to paragraph 28 of your report.

19 A. Paragraph 28?

20 Q. We are going to look at paragraph
21 28 of your report and look at the 2015 IPS.

22 A. All right, I have paragraph 28.

23 Q. You say, "The responsibilities of
24 such a committee are customarily set forth in
25 plan documents such as a committee charter and

1 DONALD C. STONE

2 may include, among other things, 'establishing,
3 interpreting and following investment policy
4 statement'." Do you see that?

5 A. I do.

6 Q. Let's turn to page 4 of the IPS.

7 A. Okay.

8 Q. Do you see here that it sets forth
9 the roles and responsibilities of the 401-K
10 committee. And it sets forth exactly what the
11 401-K committee is going to do and that
12 includes preparing and maintaining the IPS?

13 A. Yes, I see that.

14 Q. And then you see here in bullet
15 point two you say, "Selecting investment
16 options for the plan including the QPA."

17 A. Yes.

18 Q. Do you see here where it says,
19 "Determine guidelines for selecting investment
20 options and then provide sufficient asset
21 classes with different and distinct risk return
22 profiles so each participant may prudently
23 diversify his or her accounts." Do you see
24 that?

25 A. Hold on, I got my pages turned up

1 DONALD C. STONE

2 here. Where are you again now?

3 Q. I'm on page 4 of the IPS, bullets
4 number 3 and 4.

5 A. Determine guideline and provide
6 sufficient asset classes, okay.

7 Q. Do you see subsection 3 on page 28
8 of your report says "Monitoring the performance
9 of each of investment options"?

10 A. Yes.

11 Q. Then do you see two bullets down
12 it says here "Establish procedures for continuing
13 monitoring and evaluating the investment
14 options."?

15 A. Yes.

16 Q. Then do you see bullet point four
17 where it says, "Appointing service providers
18 for the plan including investment advisors?

19 A. Yes.

20 Q. Do you see the last sentence of
21 this page it says "The committee also has the
22 authority to obtain the services of any third
23 providers as it deems necessary."?

24 A. Yes.

25 Q. Mr. Stone, you also state in your

1 DONALD C. STONE

2 report at what I'll say that you seem to have
3 taken issue with the fact that the committee
4 operated by consensus voting; is that correct?

5 A. Yeah, it is not -- I think it can
6 be confusing. It's not that you can't do
7 consensus voting, but sometimes in the not
8 clear and particularly in this record it is not
9 clear if they actually took a vote or what the
10 results of the vote were in some cases. And
11 what happens to somebody if you don't have a
12 consensus.

13 That to me strikes me as a
14 particularly potentially dangerous area to get
15 into that you can't reach a consensus. So it
16 is not -- I'm not saying that you can't use
17 consensus voting, but I'm raising that I don't
18 think it is the best approach to -- it is not
19 the approach that makes sense to me to use
20 given the fact that you might not have
21 consensus, given the fact that in this
22 particular case -- again, it is not clear that
23 they took a vote on many of these cases. It
24 just seems to -- something happened and it is
25 not -- we took a vote, here is what we vote to

1 DONALD C. STONE

2 do, even if it was by consensus.

3 Q. Well is it required by ERISA, the
4 DOL or anyone else that committee members take
5 a vote on every decision?

6 A. Again, almost nothing that we're
7 talking about is, quote/unquote, required.

8 This comes back to the prudent
9 practice and what is the common and accepted
10 practice in the industry today or during the
11 time period that we are talking about. What
12 are the things that make -- what would make
13 this a group process. That is what I'm talking
14 about.

15 And no, I'm not going to say
16 they got to list of all of these 42 different
17 things you should be doing because none of
18 these existed -- most of them didn't exist at
19 the time that ERISA was passed. So the
20 Department of Labor hadn't come out with a list
21 like that.

22 Q. So is it your testimony that the
23 only prudent way to operate a committee is to
24 have an formal vote on every decision?

25 MR. ROBERTS: Objection to the

DONALD C. STONE

form.

A. I don't think you have to have a, quote, formal vote on every decision. But I think that that is a practice that is generally accepted in the industry as a prudent way to operate because it does demonstrate that decisions were made and how they were made and who made them.

Q. Okay, did you identify any particular circumstances here where you couldn't determine whether or not a decision was made?

A. I don't see any record of votes in most of these cases.

Q. That wasn't my question.

A. I can't determine that if there was no vote. I can't determine what they decided.

Q. If the committee talked about an issue and together made a decision without a formal yes/no vote, but came together and made a decision and then the meeting minutes reflect that the committee made a certain decision, is that an unreasonable process in your view?

1 DONALD C. STONE

2 A. How could say they made a decision
3 if we don't know what they made a decision
4 about.

5 Q. I'm representing to you that the
6 meeting minutes state that the committee as a
7 whole made a decision.

8 A. Okay, if they say that the
9 committee made a decision, that is -- I don't
10 think -- certainly it is not a way that I would
11 prefer. It is not an imprudent thing in and of
12 itself, no.

13 Q. Would it be your -- is it your
14 testimony that the meeting minutes should
15 reflect the individual votes of every committee
16 member?

17 A. No, it doesn't necessarily have to
18 reflect the individual members' votes. It
19 could simply be the committee voted and
20 everyone was in agreement or a majority agreed
21 to remove this fund from watch or put it on
22 watch or what have you. That would be, I
23 think, sufficient.

24 Q. So I want to make sure that the
25 record is clear.

1 DONALD C. STONE

2 Your testimony is not that a vote
3 is required by each committee member in order
4 to reach a decision. Your testimony is that
5 the record needs to reflect that a decision was
6 made, whether by consensus or otherwise?

7 A. It needs to reflect that a
8 decision was made and I think the clarification
9 would be the best way to do that is through an
10 actual vote.

11 Q. But it is not the only way; isn't
12 that correct?

13 A. It is not the only way.

14 MR. ROBERTS: Keri, we have been
15 going for over an hour, would now be a good
16 time to take a break?

17 MS. ENGELMAN: Yes, let's take ten
18 minutes.

19 THE VIDEOGRAPHER: The time is 9:09
20 and we are off the record.

21 (Recess Taken.)

22 THE VIDEOGRAPHER: The time is 9:26
23 and we are on the record.

24 BY MS. ENGELMAN:

25 A. Can I interject something before

DONALD C. STONE

you ask me a question?

Q. Sure.

A. So I want to -- I had a chance to over this break to go through and look at a couple of the times that you asked me about earlier. And I misspoke earlier talking about, for example, the changeover was, because that was in my head the changeover was to the new FIA funds of Fidelity. That was actually 2022.

So the timeframe that I should have been working with was 2016. It began in 2016 through 2022 when they changed over to the FIAM version of the Fidelity funds. That would be consistent with what is in my report and I reference part of that on page 40, for example.

Q. So is it your testimony that your report does not go out beyond 2020; is that correct?

A. No, it goes through to the change over to FIAM in 2022.

Q. Sorry, I meant 2022.

A. Yes.

Q. It doesn't go beyond 2022; is that right?

1 DONALD C. STONE

2 A. That's correct.

3 Q. It is your testimony that the
4 change from the Freedom Funds to the FIAM funds
5 happened in 2022?

6 A. Yes.

7 Q. What is the basis of your change
8 in testimony regarding the 2016 time period?

9 A. I went back and looked through the
10 report.

11 Q. Did you speak with counsel during
12 this break?

13 A. I did not speak with him, no.

14 Q. If you turn to page 97 of your
15 report.

16 A. Page 97?

17 Q. I'm sorry, paragraph 97.

18 A. I was going to say, page 97, I'm
19 going to run out of pages. Paragraph 97 page
20 41, okay.

21 Q. You say that, "The committee
22 relies solely on the plan's investment advisor
23 to identify investments that became
24 noncompliant with the plan's IPS that might
25 otherwise be unsuitable for the plan." Do you

1 DONALD C. STONE

2 see that?

3 A. I do.

4 Q. In that paragraph are you
5 referring to specific instances that investments
6 became noncompliant with the IPS or otherwise
7 became unsuitable for the plan?

8 A. There were a couple of instances
9 that were referenced and it's a question of
10 finding the pages and everything where -- this
11 is on page 43. If you look at 104 we start
12 getting into that in terms of what -- this was
13 where the whole thing where the -- Ascende was
14 using or QPA was using a version their scoring
15 system that was not in sync with the IPS and so
16 I think the committee did not -- they didn't
17 look on their own and they didn't get any other
18 information and they were I think not getting
19 good information, consistent information as to
20 what should have been or would have been on
21 watch and not on watch.

22 Q. So when you talk about that
23 paragraph, you're referring to the three
24 instances that you identify in I think
25 paragraph 104 of the report?

1 DONALD C. STONE

2 A. Page 104 --

3 Q. Paragraph 104?

4 A. Paragraph 104, you're right. And
5 so the American Beacon Fund and DFA Fund and
6 then the Freedom Funds as well. So those are
7 the three that I call out in that particular
8 instance, yes.

9 Q. Did you identify, in preparing
10 your report, any other instances that you did
11 not include in your report?

12 A. None are coming to mind at the
13 moment.

14 Q. When you're talking about the QPA
15 or Ascende at the time was using a scoring
16 system, that in your view was inconsistent with
17 the 2015 IPS; is that correct?

18 A. Correct.

19 Q. Is it your understanding that the
20 scoring system was implemented sometime around
21 2017; is that correct?

22 A. So, yeah, there were three
23 iterations of scoring systems. One was in
24 place during the 2015 IPS and the next one was
25 2017 and then there was another change in 2019.

1 DONALD C. STONE

2 What happened is, QPA was changing
3 their systems to -- I think they upgraded or
4 they changed the -- it sounds like they changed
5 some of the software they were using. So they
6 started using a different reporting standard
7 than had been used in the past. I think this
8 pretty much left -- unfortunately left the
9 committee unaware of -- they didn't go back and
10 say what about under this scoring system would
11 this thing have been compliant before or not.
12 You'd have to go through and look at every fund
13 over multiple periods of time, which I did not
14 do.

15 Theoretically you can go back and
16 say maybe these were compliant under this
17 system but they weren't under that system. But
18 the changeover in the systems was I think a
19 significant concern.

20 Q. Is it your understanding that
21 there was a scoring system prior to 2017 in the
22 IPS?

23 A. I believe there -- I'm trying to
24 see -- I have to go back and look through my
25 report, but I recall there was one standard --

1 DONALD C. STONE

2 I don't know that they -- there was one
3 standard that was being used in 2015 and then
4 switched over to the pass/fail and then they
5 went to this other point count system
6 ultimately and that's when they got them to
7 delay the score. So that's three in my mind.

8 Q. I want the record to be clear
9 here. If you need to consult your report
10 please do so. But if you look at the 2015 IPS
11 there is no scoring system.

12 A. I guess the question is not the
13 IPS, but what is being reported by QPA or
14 Ascende in terms of how they came up with
15 whether something was potentially on watch or
16 not.

17 So not necessarily the scoring
18 system in the 2015 IPS, because I don't think
19 that was there, but I'm not sure that they --
20 you know, I guess that, to -- well, the 2015
21 maybe that is where it is. They didn't have
22 Appendix B or there was something about an
23 Appendix B missing and that is probably where
24 the scoring was.

25 Q. Let's turn to page 47 of your

1 DONALD C. STONE

2 report.

3 A. 47?

4 Q. The bottom of page 47.

5 A. Okay.

6 Q. It says "The scoring system
7 implemented after 2017 conflicted with the
8 monitoring standards established in the IPS."

9 Do you see that?

10 A. No, where are you reading?

11 Q. Does that refresh your
12 recollection that your opinion is that the
13 scoring system was implemented in 2017?

14 A. Where were you reading?

15 Q. The bottom of page 47.

16 A. Okay. The scoring system
17 implemented -- you're talking about 3-I?

18 Q. Yes.

19 A. Okay, yes, the inconsistencies --
20 yes.

21 Q. So to make the record clear. Is
22 your recollection refreshed that the scoring
23 system was implemented in 2017 and not prior to
24 that. So when we turn back to paragraph 97 of
25 your report and the examples, the scoring

1 DONALD C. STONE

2 system that you're talking about was the ones
3 in place in 2017 and after that time period; is
4 that correct?

5 A. That's correct. But we don't know
6 what attachment B was to the 2015 IPS.

7 Q. Do you have any knowledge of
8 testimony otherwise that says there was a
9 scoring system in Appendix B?

10 A. No, I just know there is an
11 Appendix B that is referenced in the scoring --
12 excuse me in the -- in there. We don't know
13 what it says. But I reference there were a
14 number of analytics that they were referencing
15 in the document.

16 Q. Did you review the quarterly
17 investment reports prior to 2017?

18 A. Yes, I looked at investment
19 reports prior to 2017, yes.

20 Q. Did those reflect a scoring system
21 of any kind?

22 A. I don't recall and I'm not looking
23 at one in front of me. Even if they had an
24 internal scoring system, it wouldn't
25 necessarily be reflected in that report.

1 DONALD C. STONE

2 Q. Do you have any knowledge about
3 whether or not there was an internal scoring
4 system?

5 A. I don't know what was in the
6 appendix. I don't know what I don't know
7 there. I'm just raising that as a question.

8 Q. Let's turn back to page --
9 paragraph 104 of your report, page 43.

10 A. Okay, I'm there.

11 Q. So you say, "Plan investments
12 frequently ran afoul of the standards adopted
13 in the IPS for assigning monitor and alert
14 status, but escaped mention or scrutiny because
15 the binary pass or fail hegemony of the scoring
16 system was the sole monitoring approach
17 undertaken by the committee." Do you see that?

18 A. I do.

19 Q. And that pass/fail system was
20 implemented in 2017 to your knowledge?

21 A. I think so, yes.

22 Q. Then you testified earlier that
23 these are the examples that you could come up
24 with where there was an inconsistency between
25 the scoring system and the 2015 IPS; is that

1 DONALD C. STONE

2 right?

3 A. That's correct.

4 Q. If we look at the 2015 IPS.

5 A. Okay, I have it up

6 Q. You say, "The deference to the
7 scoring system permitted the DFA Funds below
8 peer median three-year Alpha and negative
9 three-year Alpha Information Ratio to go
10 undetected --

11 A. Where are you? What paragraph are
12 you?

13 Q. I'm still on paragraph 104.

14 A. Okay.

15 Q. It says "The committee's
16 indifference to the IPS investment watch list
17 process and deference to the scoring system
18 permitted the DFA Fund below peer median
19 three-year Alpha and negative three-year Alpha
20 information to go undetected in Q3, 2018." Do
21 you see that?

22 A. Yes.

23 Q. So let's turn to in the IPS, the
24 2015 IPS. Let's turn to the investment watch
25 list process page.

1 DONALD C. STONE

2 A. Remind me again which page that
3 is.

4 Q. Page 13.

5 A. I'm there.

6 Q. You're there, okay. Can you point
7 me to where in this document it says that a
8 below peer median three-year Alpha and negative
9 three-year Alpha Information Ratio requires a
10 monitor status?

11 A. The second bullet point I think
12 speaks to I think what you're asking about
13 which is the peer group median risk adjusted
14 return is in the second bullet point.

15 Q. You agree with me that is one
16 consideration that the committee may consider?

17 A. Yes.

18 Q. But does not have to consider?

19 A. It says may consider in the IPS.

20 Q. Then if we look at --

21 MS. ENGELMAN: Maria, can we pull
22 up I believe it is the Q4, 2018 minutes.

23 (Exhibit 3 for identification, Q4,
24 2018 meeting minutes.)

25 A. Okay, let me open that.

1 DONALD C. STONE

2 Q. So this is the quarter after the
3 quarter that you referred in your report where
4 you said this information was undetected; is
5 that right?

6 A. Yes.

7 Q. Do you see here where it says "The
8 DAF was place on monitor status as of Q4, 2018."?

9 A. Which page are you on?

10 Q. I'm on page, I guess this is page 3.

11 A. The DAF International Small/Mid
12 Cap Value.

13 (Witness reviewing document.)

14 A. Okay.

15 Q. So you agree that the committee
16 detected performance issues with this fund in
17 Q4 2018?

18 A. Q4 they did, they are talking
19 about short-term decline.

20 Q. Did you reference that document
21 prior to forming your opinion?

22 A. I read this document, yes.

23 Q. You didn't include it in your
24 report?

25 A. I don't know if there is a bullet

1 DONALD C. STONE

2 point or if there is a footnote on it, I don't
3 think there is, but I don't recall that at this
4 point.

5 Q. Do you recall whether or not the
6 American Beacon Funds were ever placed on
7 monitor status?

8 A. I do not recall if they were
9 placed on monitor status. They don't appear to
10 have been placed on monitor status during this
11 quarter?

12 Q. Right, okay. Stick with paragraph
13 104, the second to last sentence you say, "The
14 Freedom Funds' negative information ratios over
15 both three and five-year period were ignored in
16 Q4, 2015." Do you see that?

17 A. I do.

18 Q. So again, you testified earlier
19 that when you're talking about the scoring
20 system in these paragraphs you're talking about
21 the one that was implemented in 2017?

22 A. Well, this is referring back to
23 2015.

24 Q. Okay. But you testified earlier
25 that the inconsistency with the IPS that you

1 DONALD C. STONE

2 were speaking about in this paragraph relates
3 to the 2017 scoring system. Do you recall that
4 testimony?

5 A. I do, but I think that misspoke
6 the fact that I also had an example from an
7 earlier period.

8 Q. Okay, tell me -- point me to where
9 in the 2015 IPS it requires a monitoring status
10 for a negative Information Ratio on a three and
11 five-year period?

12 A. Again I don't think it has that
13 specifically to a -- it is one of the monitoring factors
14 that you can look at and the committee did not
15 seem to address it.

16 Q. When you came back from the break
17 you clarified that the relevant period was from
18 2016 forward. Do you recall that?

19 A. I do.

20 Q. Do you know what month in 2016?

21 A. That would have been the beginning
22 of 2016, so that would have included the Q4
23 report that was in February or so.

24 Q. February of 2016?

25 A. Correct.

1 DONALD C. STONE

2 Q. So you believe the relevant time
3 period cover January, 2016 forward?

4 A. It covers the period of that --
5 yes, from January of 2016 forward.

6 Q. So can you explain to me why
7 you're providing an example in 2015?

8 A. Because it wasn't reported on
9 until 2016. The committee would not have had
10 the information until 2016 and that's the time
11 when it would have been triggered.

12 Q. So if we turn to paragraph 117 of
13 your report.

14 A. Okay.

15 Q. So if you turn to page 47, I want
16 to go back to this. We are under a bullet 3-1?

17 A. Hold on?

18 Q. We looked at it earlier.

19 A. Okay.

20 Q. So we are talking about the
21 scoring system implemented after 2017
22 conflicted with the monitoring standards
23 established by the IPS. That is the bullet
24 under which this section is created; correct?

25 A. Yes, 3-I.

1 DONALD C. STONE

2 Q. Can we agree that the information
3 in this section relates only to the time period
4 of 2017 forward?

5 A. I don't know why we are would do
6 that.

7 Q. Is that not what it says?

8 A. So that's what the -- I understand
9 what you're saying. It's a grammatical issue
10 about where it is placed in here as opposed to
11 a substantive issue.

12 Q. It's not a grammatical issue. The
13 heading is "The scoring implemented after 2017
14 conflicted with the monitoring standards
15 established by the IPS."

16 My question is, the paragraphs
17 that follow under that heading, will you agree
18 with me these relate to the time period of 2017
19 forward when the scoring system was
20 implemented? That is not grammatical, that is
21 your text.

22 A. I understand what you're saying.
23 Okay.

24 Q. So you agree?

25 A. I agree that's what the heading

DONALD C. STONE

says, yes.

Q. That wasn't my question. Do you agree that the paragraphs that follow until we get to the second subbullet on page 50 relate only to the time period after 2017 when the scoring system was implemented, which I will represent to you is Q3 2017, if you don't know that?

A. Okay.

Q. So the first bullet point, it says "The IPS dictates that performance will be measured by comparing rates of return to appropriate market indexes and peer groups for me recent quarter, year to date, one year and three-year period." Do you see that?

A. I do see that.

Q. You saying that is what the 2015 IPS requires; is that correct?

A. That would be the 2015, yes.

Q. Then you say, "The scoring system evaluates performance against benchmark indexes for three year and five-year period and again peers for one, three and five-year periods." Do you see that?

1 DONALD C. STONE

2 A. I do.

3 Q. And you have highlighted and
4 bolded -- I'm sorry italicized and bolded the
5 five-year period. Do you see that?

6 A. I do.

7 Q. So your point here is that these
8 scoring systems evaluated five-year performance
9 against benchmark and peer groups, but the IPS
10 did not call for five-year performance against
11 benchmark and peer groups; is that correct?

12 A. Correct.

13 Q. Then you say, "In addition to
14 incorporating an assessment of funds
15 performance for a longer timeframe than the
16 IPS". So again, you're criticizing the
17 committee for looking at a longer time period
18 than the IPS contemplated; is that correct?

19 A. Yes, I'm just saying it is
20 inconsistent, yes.

21 Q. Is it your opinion that it is
22 inappropriate for the committee to evaluate
23 five-year performance against benchmark and
24 peer groups?

25 A. No, I'm saying it is inconsistent

1 DONALD C. STONE

2 with the two don't tie together. And that is
3 one of the things that I'm saying is there are
4 places where these two don't tie together and I
5 think that could present confusing information
6 to the committee.

7 There is nothing wrong with a
8 five-year number per se, but that is not a part
9 of the IPS. So if you go and get a scoring
10 based on a five-year number, you might come up
11 with a different answer than what the IPS would
12 necessarily dictate.

13 Q. Okay. So let's look at the IPS.
14 Go back to the 2015 IPS. And what you're
15 referring to is on page 12 of the IPS. Do you
16 see that?

17 A. Let me get to page 12. Okay, yes
18 performance evaluation, right.

19 Q. So the middle of the page it says,
20 where I think you got your quote from.

21 "Performance hopefully measured by comparing
22 rates of return to the appropriate market
23 indexes and peer groups for the most recent
24 quarter, year to date, one-year and three-year
25 period and longer periods where available." Do

1 DONALD C. STONE

2 you see that?

3 A. I do.

4 Q. And that would include five-year
5 period?

6 A. Yes, it would.

7 Q. So that is not inconsistent with
8 the IPS at all, is it?

9 A. No, it would seem to be
10 consistent.

11 Q. Why did you state in your report
12 that it was inconsistent with the IPS?

13 A. I probably misread it.

14 Q. Okay.

15 Would you agree with me that the
16 quarter data would be captured by the one year
17 data?

18 A. No, the quarter data is data -- I
19 mean it would be subsumed under it, but
20 reporting on the quarter is a separate
21 reporting element.

22 Q. But it would be subsumed in the
23 one year data, correct?

24 A. But you wouldn't know what part of
25 it was, that's why you call it out separately.

1 DONALD C. STONE

2 Q. Aside from the scoring system, do
3 you know one way or the other whether or not
4 the committee was receiving in the quarterly
5 reports all of this information?

6 A. They were getting quite a bit of
7 information in the quarterly reports.

8 Q. So did you review, aside from the
9 scoring system, did you review all of the
10 metrics that the committee was receiving in the
11 quarterly reports?

12 A. I did look at the metrics they
13 were receiving, yes.

14 Q. Did you form an opinion as to
15 whether or not all of the metrics they were
16 receiving were inconsistent with the IPS?

17 A. The metrics seemed fine.

18 Q. If we go to the second bullet it
19 says, "The IPS investment watch list process
20 identified performance below the peer median
21 over three, five or ten years as a criterion to
22 consider in placing an investment on monitor or
23 alert status despite the ten-year returns not
24 appearing anywhere in the scoring system." Do
25 you see that?

1 DONALD C. STONE

2 A. I do.

3 Q. Was the ten-year returns provided
4 in the quarterly investment reports outside the
5 scoring system?

6 A. I have to look at the quarterly
7 report to confirm that. They probably were,
8 but I have to look at the report to confirm it.

9 Q. So if we turn to the next page.
10 It says, "The scoring system requires an
11 investment manager to have at least a
12 three-year tenure to receive a passing score
13 for that component, but IPS cautions that any
14 change to an investment manager could be
15 sufficient reason to assign a fund to monitor
16 or alert status." Do you see that?

17 A. I do.

18 Q. So wouldn't a three-year tenure
19 encompass any change to an investment manager?

20 A. To get a passing score you have to
21 have -- let me read it.

22 (Witness reviewing document.)

23 A. I'm trying to understand what
24 you're asking me.

25 Q. So you say, "The IPS cautions that

1 DONALD C. STONE

2 any change to an investment manager could be
3 sufficient reason to assign a fund to monitor
4 or alert status." Right?

5 A. Correct.

6 Q. And the scoring system requires
7 that a manager have at least a three-year tenure;
8 is that right?

9 A. Yes, it does.

10 Q. If there is a change --

11 A. That is not the same as any
12 change. That could be -- again, the language
13 is not clear. That could be something else.

14 Q. What is it in your view? How are
15 these inconsistent?

16 A. You could have had a team of
17 people and one of them left, that wouldn't
18 change the fact that you still have a
19 three-year tenure. But it could be if that was
20 a person -- that that person left might be a
21 reason that you'd want to consider monitor or
22 alert status.

23 Q. Do you know whether or not the
24 committee was receiving information about
25 whether or not there was any change to the

1 DONALD C. STONE

2 investment manager in the QIRs?

3 A. They were receiving that.

4 Q. So that is not inconsistent with
5 the IPS; correct?

6 A. No.

7 Q. I want to turn your attention to
8 some of qualitative criteria. Turn to paragraph 131
9 of your report.

10 A. Let me get there.

11 Q. Here you're talking about a March,
12 2018 report, a special report regarding the
13 Fidelity Freedom Funds.

14 A. Yes, the Reuters report.

15 Q. This Reuters report dealt with
16 withdrawals from the Fidelity Freedom Funds
17 over the preceding four years; is that right?

18 A. Correct.

19 Q. Is it your -- did you review that
20 report in connection with preparing your
21 report?

22 A. Yes.

23 Q. Are you aware that -- am I correct
24 that that report was dealing with essentially
25 an overhaul of the Fidelity Freedom Funds that

1 DONALD C. STONE

2 happened if 2014 that resulted in some riskier
3 investments; is that correct?

4 A. Well, it was -- they changed their
5 glide path and probably some of the underlying
6 funds in 2014, so between 2014 and 2018 there
7 was a substantial runoff of assets by people
8 who got concerned about what the risk might be.
9 There was an increase in equity depending on
10 vintage between 1 and 20 percent and there were
11 a few other, I think there are probably a few
12 other tweaks that I don't remember off the top
13 of me head.

14 In any event, Fidelity was
15 undergoing substantial run off of assets that I
16 think about 15 billion during that period of
17 time. And other target dates series were
18 gaining assets. So it was actually a rather
19 fraught period at Fidelity, they were losing
20 market share overall.

21 Q. You say in here towards the
22 bottom of this paragraph, "The committee never
23 reviewed or discussed these concerns much less
24 deliberated their impact on the Freedom Funds
25 standing in the plan whether as a result of the

1 DONALD C. STONE

2 plan's investment advisor bringing this report
3 to the committee's attention or to the
4 committee independently identifying significant
5 negative reporting concerning the plan's most
6 important investments." Do you see that?

7 A. I do.

8 Q. So did you review all of the
9 minutes to determine whether or not the
10 committee had ever discussed this report or
11 otherwise discussed the underlying overhaul of
12 the Fidelity Freedom Funds.

13 A. I did not see anything specific to
14 the special report.

15 Q. What about the overhaul of the
16 Fidelity Freedom Funds?

17 A. I don't recall at the moment. I
18 wouldn't be surprised if they did have some
19 conversation around that.

20 Q. Why wouldn't you be surprised
21 about that?

22 A. Well, I would expect -- I would
23 hope they would. I just wouldn't be surprised.
24 It's a big event at the time.

25 Q. Why is it that you believe that

1 DONALD C. STONE

2 the special report should have been considered
3 if in fact the actual -- if the committee was
4 actually monitoring the overhaul itself and the
5 impact on the plan?

6 A. Well, I would like -- again, I'm
7 saying it ought to be in there, but I'm not
8 looking at the particular minutes. I don't
9 recall which minutes might have them in there.
10 I would have to look at that.

11 MS. ENGELMAN: Maria, can you pull
12 up Q1 2015 committee meeting minutes
13 please.

14 (Exhibit 4 for identification, Q1
15 2015 committee meeting minutes.)

16 A. That was a Q4 '18?

17 Q. It should be Q1, 2015.

18 A. Q1, 2015, I got that. Okay.

19 Q. Do you see here where it says that
20 "The Fidelity Freedom Funds were on monitor
21 status in part due to the underlying -- the
22 performance history of the underlying fund but
23 also --

24 A. Where are you in this?

25 Q. Page 4.

1 DONALD C. STONE

2 A. Page 4, okay. Fidelity Freedom
3 Funds, okay.

4 (Witness reviewing document.)

5 A. So that's an addition to reason
6 for monitoring added for that quarter.

7 Q. So do you agree that they were on
8 monitor status and the committee was monitoring
9 the enhanced guide path that changed in the
10 latter part of 2013 which increased overall
11 equity exposure between 10 percent and 20
12 percent across the various vintages?

13 A. But they waited nearly two years
14 to do that.

15 Q. Well, I'm showing one set of
16 minutes here. I'm asking if you agree that
17 during this time period they were monitoring
18 that?

19 A. They were monitoring the glide
20 path change at this point, yes.

21 Q. Do you have any reason to believe
22 sitting here they weren't monitoring during
23 other time periods?

24 A. I don't recall seeing it on watch
25 for other time periods and they said -- so it

1 DONALD C. STONE

2 was added at this point due to do the enhanced
3 glide path and maybe because it just want into
4 effect -- I don't know if it shows up in prior
5 minutes or not.

6 Q. If you were a -- let me ask you
7 this. Are you suggesting in this report that
8 the 2018 special report should have resulted in
9 any particular action with respect to the
10 Freedom Funds?

11 A. Again, I would go back to what I
12 said before. I would think that it would first
13 lead to an in-depth analysis as to what was
14 going on with them. It would not simply be
15 business as usual.

16 I think that would be to me the
17 kind of thing that would raise the issue that
18 to put them back on watch if they weren't on
19 watch and to do a deep analysis of, in this
20 case, going back to find out how much assets
21 they were losing, what the impact of that was,
22 what the -- why the concern about the putting
23 6 million participants at risk is kind of a hot
24 headline to say the least.

25 I would think that they would

1 DONALD C. STONE

2 want to go do a deeper analysis and that would
3 show up in let's say the next quarter's
4 reports.

5 Q. But other than that, any
6 particular outcome that you were opining should
7 have resulted as a result of --

8 A. It depends on what they found when
9 they did that as to whether they would replace
10 them or not.

11 Q. Turn to paragraph 135 of your
12 report.

13 A. Okay.

14 Q. Actually, you know what, we are
15 going to go somewhere else first and then to
16 that.

17 So Mr. Stone, you're familiar with
18 the target date deep dives that were presented
19 to the committee?

20 A. Yes.

21 Q. It's your opinion they were
22 presented annually from 2014 to 2024 other than
23 2017 that is in paragraph 137 of your report?

24 A. Correct.

25 Q. You say that the committee did not

1 DONALD C. STONE

2 ask for those deep dives in your report. Do
3 you see that?

4 A. Where are you?

5 Q. On paragraph 137 toward the end
6 of the paragraph you say "Committee members did
7 not recall requesting additional information or
8 taking any action as a result of the target
9 date deep dives."

10 A. Yeah, that was the Riddle
11 deposition.

12 Q. Then the last sentence says,
13 "These documents were not prepared at the
14 request of the committee or tailored to the
15 Quanta plan, but instead were distributed to
16 each of Ascende's clients." Do you see that?

17 A. Yes.

18 Q. You were relying on Mr. Eagar's
19 testimony that the committee did not request
20 these deep dives?

21 A. Correct.

22 Q. Why does it matter whether or not
23 the committee requested the deep dives or not
24 if they saw them and considered them?

25 A. Well, I think it has had do with

1 DONALD C. STONE

2 their being kind of what they're asking for
3 that they are in charge, they are the ones
4 making the decision as opposed to something
5 just being fed to them which was a document
6 that was sent to every client. I think there
7 is a difference.

8 There is obviously a difference if
9 the committee says, you know, we would really
10 like to see a deeper dive of the Fidelity
11 Freedom Funds relative to a broad array of
12 other target date funds. That's a very
13 different fact pattern than if Ascende just
14 simply says, we've created this, we thought
15 we'd go over this and we thought you'd find
16 this interesting.

17 Q. If the committee is receiving the
18 information and considering the information in
19 its analysis, why does it matter who requested
20 it in the first place?

21 A. Because it's a motivational issue.
22 They didn't seem to have any interest in
23 finding out how others were doing. That was
24 the point.

25 Q. You testified earlier that you

1 DONALD C. STONE

2 provided similar reports to your clients; is
3 that correct?

4 A. We did.

5 Q. Did every committee which you
6 worked with ask for that information or did you
7 just provide it?

8 A. One of them -- there is a myriad
9 number of things that we provide as part of our
10 service.

11 Q. You testified that you didn't
12 tailor those specific documents to the specific
13 plans; is that correct?

14 A. No, like I had said, this was just
15 an add-on that we provided. But the point
16 would be that if a client asked for specific
17 information, that's different than if we just simply
18 send them information or in this case if QPA
19 sends them information.

20 Q. Did you draw a conclusion that the
21 committees with which you were working were
22 operating imprudently if they hadn't asked for
23 this type of information?

24 A. That isn't what I said. It's a
25 different circumstance in terms of, if you ask

1 DONALD C. STONE

2 for something you're showing more, obviously,
3 more interest in being proactive about things.
4 And all I'm saying in this particular case is
5 the committee did not proactively ask for this
6 information. Not everybody that I worked with
7 asked for it either. Some did, some didn't.
8 But I'm just saying that is a different fact
9 pattern.

10 MS. ENGELMAN: Can you pull up
11 minutes, Maria, please.

12 (Exhibit 5 for identification, Q1
13 2016 Meeting Minutes.)

14 A. Which meeting minutes is that?

15 Q. It should be the latest document
16 in Exhibit Share, Q1 2016.

17 A. Which document?

18 Q. Q1.

19 A. Q1, 2016, I got it.

20 Q. If you turn to the bottom of the
21 page.

22 A. Which page?

23 Q. Target date fund and it says, "As
24 the meeting concluded, AWAI" which is Ascende
25 at that point in time "and the committee

1 DONALD C. STONE

2 discussed an overview of the Fidelity Freedom
3 Funds. The committee expressed interest in
4 conducting a due diligence project to review
5 the Freedom Funds versus some industry
6 competitors."

7 Does that refresh your
8 recollection that the committee actually
9 requested these types of analysis?

10 A. It sounds like they did request
11 some additional information.

12 MS. ENGELMAN: Maria, can you pull
13 up 2016 deep dives.

14 (Exhibit 6 for identification, 2016
15 Deep Dives.)

16 Q. Mr. Stone, I point your attention
17 paragraph 39 of your report.

18 A. 39, okay.

19 Q. Here you talk about what
20 responsible plan fiduciaries should do when
21 assessing target date funds. Do you see that?

22 A. Yes.

23 Q. And in the middle of the paragraph
24 you say, "The fiduciaries gather and evaluate
25 essential information about the available

1 DONALD C. STONE

2 options such as historical returns and risk
3 adjusted returns, fees, expenses, and
4 differences in their glide path, asset classes
5 and underlying investments." Do you see that?

6 A. Yes.

7 Q. So if you pull up the target date
8 funds that should be in Exhibit Share which are
9 the 2016 deep dives.

10 A. Yes.

11 Q. And I represent to you that was
12 presented at the Q4 2016 meeting. If you turn
13 to page 5 of that document. Do you agree that
14 that shows the various asset classes?

15 A. This is the glide path.

16 Q. The glide path, okay.

17 A. Not the various asset classes.

18 Q. Okay, sorry I'm looking at the
19 wrong thing.

20 Do you see it shows the various
21 glide paths of various target date funds?

22 A. Maybe I'm looking at the wrong
23 one. I'm looking at Freedom Funds glide path
24 on page 5.

25 Q. Okay, hold on one second.

1 DONALD C. STONE

2 A. You're looking at the glide path
3 comparison all?

4 Q. I'm looking at equity fund split
5 of target date funds on page 5 of the Freedom
6 Funds. Do you see that?

7 A. Yes. "The Freedom Funds, The
8 International Equity Exposure, US Equity
9 Exposure, Bond Exposure."

10 Q. If we go to page 6, it looks at
11 the glide path of the Fidelity Freedom Funds as
12 compared to all the comparators in this report?

13 A. Yes.

14 Q. And then the next page looks at
15 glide path to only and the page after that
16 looks at glide path comparison through only.

17 A. Correct.

18 Q. The next page looks at the
19 composition percentage breakdown of the various
20 vintages of the Fidelity Freedom Funds.

21 A. Yes, it's a high level asset
22 allocation, yes.

23 Q. Then if we look at the next page,
24 it looks at the Freedom Funds returns on three
25 years.

1 DONALD C. STONE

2 A. Correct.

3 Q. Then if we look at next page it
4 looks at one-year returns compared to the
5 various comparators.

6 A. Correct.

7 Q. Then if we look at the next page
8 it looks at three-year returns compared to the
9 various comparators.

10 A. Yes, it does.

11 Q. Then the next page looks at the
12 five-year returns compared to the various
13 comparators.

14 A. Yes, it does.

15 Q. Then the next page looks at the
16 growth of the Fidelity Freedom Funds, certain
17 vintages.

18 A. Yes.

19 Q. The next couple of pages looks
20 like that and then we get to page 16 and does
21 this look at the risk adjusted returns?

22 A. Let me get to that.

23 Q. On a three year and five-year
24 basis compared to the comparators?

25 A. Yes.

1 DONALD C. STONE

2 Q. So does page 17 and so does page
3 18.

4 A. Okay.

5 Q. And page 19 looks at the
6 allocation of the underlying funds for the
7 various vintages.

8 A. Yes.

9 Q. And page 20 looks at the
10 three-year comparison compared to best
11 benchmark.

12 A. Yes.

13 Q. And the next page looks at
14 five-year comparison compared to best
15 benchmark.

16 A. Correct.

17 Q. And the next page looks to be --
18 the next couple of pages looks at expense
19 ratios.

20 A. Yes, it looks at returns.

21 Q. You're correct.

22 It has a summary of returns
23 compared to benchmark and annualized and net
24 expense ratios. So it's a summary of the
25 various vintages?

1 DONALD C. STONE

2 A. These is all the various sub funds
3 within the vintage, yes.

4 Q. Would you agree with me that this
5 deep dive is consistent with type of information
6 that you would expect the committee to have in
7 conjunction with paragraph 39 of your report?

8 A. I think it is good information for
9 them to have, absolutely.

10 Q. So if we look at --

11 MS. ENGELMAN: Maria, can you pull
12 up fourth quarter 2016. I'm not sure, I
13 think it is Exhibit 5, Mr. Stone.

14 A. You want me to go to Exhibit 5.

15 Q. Hold on a second. Let me make
16 sure this is right. Fourth quarter -- it
17 should be the May 10, 2017 meeting minutes
18 Maria..

19 (Exhibit 7 for identification, May 10,
20 2017 meeting minutes.)

21 Q. While you wait for that to come
22 up. So in paragraph 138 you opine in the first
23 sentence, "It's unclear if and how the
24 committee actually considered the data
25 presented in the TDF deep dives." Do you see

1 DONALD C. STONE

2 that?

3 A. Yes.

4 Q. If you look at these meeting
5 minutes and you go to the end of them -- do you
6 have them in front of you?

7 A. No they haven't come up.

8 Q. May 1st, 2017.

9 A. Okay, now let me open it, okay.

10 Q. At the bottom of the page, the
11 bottom of the document.

12 A. Okay.

13 Q. It says, "The committee reviewed a
14 target date fund comparison which analyzed the
15 current Fidelity Freedom Funds versus leading
16 industry competitors. Discussion covered the
17 glide path construction and philosophy,
18 terminal allocation point of the glide path
19 fees and diversification. The committee
20 considered like styled active managers, index
21 managers as well as blended managers using
22 active and passive underlying investments in
23 their target date strategies. Upon their
24 review the committee remained pleased with the
25 Fidelity Freedom Funds. It did not note

1 DONALD C. STONE

2 sufficient reasoning to change target date
3 providers at the time." Do you see that?

4 A. I do.

5 Q. So do you agree with me that in
6 these meeting minutes it is clear that the
7 committee considered the data present in this
8 target date deep dive?

9 A. They considered the information
10 in the target date deep dive, but it is kind of
11 a -- it actually doesn't get to the issue of
12 whether these particular funds are appropriate
13 for their participants. And this is the kind
14 of thing that we talked about earlier about the
15 minutes, you read this and I have no idea
16 whether they know or have any idea whether
17 these target date series does or does not work
18 for the participants.

19 It is just a laundry of list of
20 fees, glide path, diversification, which is all
21 stuff that you have to look at but that doesn't
22 answer that question at all. It doesn't seem
23 to go what a participant -- are participants
24 generating the kind of wealth they need which
25 would be what I would hope to see in addition

1 DONALD C. STONE

2 to the information that is here. It is just
3 not there.

4 Q. So what you would expect to
5 see is information about how the Fidelity
6 Freedom Funds are generating wealth for the
7 plan participants?

8 A. How it is working for the
9 participants. In other words, this could have
10 been for any of the 5,000 different plans out
11 there. This is what I'm saying, it could be
12 rather anodyne. This doesn't tell me, is this
13 the appropriate choice for their plan and if
14 so, why do they think it is the right choice
15 for their plan.

16 They are just saying it's --
17 that they looked at the fees, they looked at
18 diversification, they looked at the allocation,
19 the construction, all of which is good stuff.
20 All of which they should definitely be doing.
21 But nowhere does it tell me that they have tied
22 that to their own plan and how that works.

23 Q. So it doesn't tell you in the
24 minutes they tied it to their own plans, but
25 the minutes reflect that they reached a

1 DONALD C. STONE

2 conclusion after looking at all of the
3 available information that it was sufficient
4 for their plan; is that correct?

5 A. Well, no, that is not quite what I
6 said. It tells me they probably didn't consider
7 whether it works for their participants. That
8 is what I take away from that.

9 It tells me they looked at all of
10 this information, they looked at a lot of data
11 and a lot of analytics, which is good, but the
12 point of looking at all of that information is
13 to tie it back and realize is this working for
14 our plan. Is this working for our participants.
15 That's not here and that's, I don't think that
16 is ever in any of these things that I've seen.

17 That is -- people are -- they're
18 ticking all the boxes as opposed to kind of
19 actually -- they are kind of missing what the
20 punch line is here which is, is the plan
21 working well for our participants and that
22 answer is not here.

23 Q. And that answer can change
24 depending on the plan and the plan's objectives;
25 is that right?

1 DONALD C. STONE

2 A. It could, it could depend on the
3 plan's objectives, it could depend on the
4 plan's demographics. But like said, in this
5 case they are looking at all the stuff that
6 everybody gets excited about, which is all the
7 nice color charts and graphs and everything,
8 but what do you do with that information. All
9 of that stuff is for a purpose and that purpose
10 is to help you determine is this appropriate
11 for our plan. Is this working for our
12 participants. Are they getting to where they
13 want.

14 If the objective of the plan,
15 which one of the objectives is to have people
16 be able to save the appropriate amount of money
17 for retirement. This doesn't answer that
18 question. This just tells me they looked at a
19 bunch analytics.

20 Q. Okay. Going back to the meeting
21 minutes. Did you review any of the materials
22 that were appended to or attached to the
23 meeting minutes?

24 A. I did. I don't recall exactly
25 what I looked at at the moment, but yes, I did.

1 DONALD C. STONE

2 Q. Do you consider the materials
3 presented at the meeting such as the quarterly
4 investment reports to be part of the meeting
5 minutes record?

6 A. Yes.

7 Q. Let's go paragraph 135 of your
8 report.

9 A. Okay, 135.

10 Q. So you say here that "The
11 committee failed to recognize and appropriately
12 scrutinize the persistent failure of the Freedom
13 Funds to outperform its benchmark." Do you see
14 that?

15 A. I do.

16 Q. It says, "Appendix A to the 2015
17 IPS identifies S&P target date indexes as the
18 appropriate benchmark for evaluating TDF
19 performance." Do you see that?

20 A. I do.

21 Q. Then it goes on about, "There is
22 quarters bracketing the start of the class
23 period from Q4 2015 through Q1 2017, the
24 majority of the Freedom Funds vintages failed
25 to generate returns that exceeded the

1 DONALD C. STONE

2 corresponding S&P target date index on a
3 five-year basis while all but Q1 2017 the
4 Freedom Funds similarly failed that standard on
5 a three-year basis." Do you see that?

6 A. I do.

7 Q. So then you go to the next page,
8 there is a table one in your report.

9 A. There is, yes.

10 Q. Did you prepare that table?

11 A. No, I asked counsel to prepare
12 that report.

13 Q. Did you check to make sure it was
14 accurate in terms of the underperform versus
15 outperform on three year and five-year
16 performance relative to benchmark?

17 A. I went and spot checked it. I
18 didn't check every single vintage against every
19 single period.

20 Q. How did you spot check it? What
21 materials did you consult?

22 A. Go back to Morning Star and I also
23 get -- there was a couple of others too, I
24 think.

25 Q. We already talked about the fact

1 DONALD C. STONE

2 that the IPS asks for -- looks at performance
3 on a comparison to benchmark but also
4 comparison to peer group; is that correct?

5 A. Correct.

6 Q. You didn't include comparison to
7 peer group here, why is that?

8 A. Because it is -- I think this
9 demonstrates one element of underperformance.
10 There is probably an infinite number of things
11 that you could do on those things. So this is
12 one example. It is not a matter of
13 intentionally -- well, it was intentionally
14 leaving it out, but it was not because it
15 somehow or another told a different story.

16 Q. What was end of that, I didn't
17 catch it?

18 A. I said it was not left out because
19 it told a different story. I think this tells the story
20 as I wanted to tell it. It underperformed its
21 benchmark, period. I thought that was enough
22 for purposes of what I was trying to say here.

23 Q. So what is it that you're trying
24 to say here?

25 A. That they consistently

DONALD C. STONE

underperformed their benchmark over a three year and five-year period through the timeframe that we are looking at here which is Q4 of 2015 into where they actually started to outperform which is Q1 2017.

Q. So did you look at performance compared to benchmark after Q1 2017 of the Fidelity Freedom Funds?

A. I had look at some of it, yes, and the performance was better.

Q. Do you know over what time period the performance was better?

A. I can't say off the top of my head right now, no.

Q. Is it not -- is it common for investment funds to have fluctuating performance during different time periods?

A. It is and we talked about that, but we also talked about that that doesn't mean that you don't take a very deep look at underperformance and determine whether or not it is still an appropriate choice for you.

Because we don't know -- we are ex post here, we know that the funds performed

DONALD C. STONE

1
2 better, but that's great. After the fact is
3 great. At the time that they were looking at
4 this we have underperform, underperform,
5 underperform pretty much across the board for
6 an extended period which goes back to the
7 conversation I know we had several times which
8 is why weren't they taking a much deeper look
9 at this at that particular time not knowing
10 what the future would hold. Okay, nobody knows
11 that.

12 Q. In this table here you don't state
13 the level of underperformance compared to
14 benchmark, do you?

15 A. Not in this table, no.

16 Q. But you agree with me that that is
17 an important factor that the committee needs to
18 consider when evaluating whether something is
19 actually underperforming or not?

20 A. It was underperforming. The
21 question is the percentage underperforming is
22 certainly something that you could take a look
23 at and I would expect they would take a look at
24 that.

25 Q. And they would also take a look at

1 DONALD C. STONE

2 whether or not the performance was improving
3 during tis time period?

4 A. You would take a look at all of
5 this, yes.

6 MS. ENGELMAN: Can we take a ten
7 minute break and hopefully come back and
8 wrap up.

9 MR. ROBERTS: Okay.

10 THE VIDEOGRAPHER: The time is
11 10:40 and we are off the record.

12 (Recess taken.)

13 THE VIDEOGRAPHER: The time is
14 10:50 and we are on the record.

15 BY MS. ENGELMAN:

16 Q. Mr. Stone, do you recall or do you
17 know GlassBridge Enterprises was a client of
18 Pavilion?

19 A. I'm sorry, who was?

20 Q. GlassBridge Enterprises?

21 A. Glass, G-l-a-s-s?

22 Q. Yes.

23 A. I've never heard of them.

24 MS. ENGELMAN: Maria, can we pull
25 up the 5500 for GlassBridge, the 2017.

1 DONALD C. STONE

2 (Exhibit 8 for identification,

3 GlassBridge 2017 Form 5500.)

4 A. I'm opening it now.

5 Q. Can you go to Schedule C which is
6 on page 6 of the document?

7 A. Okay.

8 Q. First, actually let me start at
9 the top of the document. This is a 5500 for
10 the GlassBridge Retirement Investment Plan, do
11 you see that?

12 A. Yes, I do.

13 Q. It is the period January, 2017 to
14 December 31st, 2017, do you see that?

15 A. I do.

16 Q. If we go to page 6 of the
17 document.

18 A. Yes.

19 Q. It says Pavilion Advisory Group
20 and under there it says relationship,
21 investment advisory.

22 A. Yes, so on the following page
23 after that what you see is Jeffrey Slocum &
24 Associates which was a firm that we bought
25 based out of Minneapolis. So that is why I

1 DONALD C. STONE

2 didn't recognize that name because that was a
3 Slocum client and 2017 sounds like the time
4 that we actually close that deal and taken them
5 over as a client.

6 Q. So when you took them over as a
7 client, did some of their investment advisors
8 come over to Pavilion as well?

9 A. Yes, most of them did.

10 Q. Did you interact with those folks?

11 A. I did interact with them. Mostly --
12 occasionally I saw a few of them, but I never
13 went to the Minneapolis office, so I didn't
14 meet all the people that worked there.

15 Q. Were you an executive director of
16 Pavilion at this time?

17 A. I was.

18 Q. So you feel that the investment
19 advisors who were serving in the 321 capacity
20 were fulfilling their fiduciary obligation?
21 Any reason not to believe that?

22 A. I'm sorry, repeat that I
23 couldn't --

24 Q. Do you believe that the 321
25 investment advisors that were employed by

1 DONALD C. STONE

2 Pavilion at this time were fulfilling their
3 fiduciary obligation?

4 A. The ones that I knew were
5 certainly. I can't speak to people that I
6 didn't know and I think I kind of carved that
7 out earlier. But to the extent that I knew
8 people, I was absolutely certain they were
9 doing the correct thing.

10 I didn't have a -- I mean some
11 of these -- I don't know who -- I don't know
12 who was responsible for this relationship. So
13 while I would like to think they certainly were
14 doing exactly what they should be doing, I
15 don't know what they were doing because I
16 wasn't -- I don't even know it we integrated
17 them into our reporting system at this
18 particular time, because you have part of the
19 fee went to Jeffrey Slocum & Associates, so
20 that would have been probably just earlier in
21 the year and then the rest of it would have
22 been Pavilion later in the year. So I would
23 guess that we may not have even switched over
24 the reporting system at that point.

25 Q. So would it have been your

DONALD C. STONE

expectation that when Pavilion essentially, I guess, acquired this business, that it ensured that the individuals who were working on the clients that were now Pavilion were fulfilling their fiduciary obligations?

A. Yes, I would expect that they would do that. How that was validated, I'm not sure.

Q. If we turn Schedule H of this document which I will tell you the PDF number in a second.

A. I'm there.

Q. You see here as of December 31, 2017 this plan offers the Fidelity Freedom Funds K Class?

A. I'm on Schedule H. Isn't H the one that you want to be in?

Q. Page 41 of the document, Schedule H line 4-I.

A. 4-I, okay. I'm missing it somewhere. I'm not sure where you're looking.

Q. On page 41 of 43.

A. 41 of 43. Okay way down there. Hold on. Almost there. Okay, I'm on page 41

1 DONALD C. STONE

2 of 43.

3 Q. Do you see where it says the
4 Fidelity Freedom Funds and the various vintages
5 K Class was offered in this plan?

6 A. I do.

7 Q. As of December 31st, 2017?

8 A. Yes.

9 Q. Do you see that?

10 A. Yes.

11 Q. Do you agree with me that the
12 Pavilion advisors would have had the same
13 performance information that you identified in
14 table 1 paragraph 135 of your report?

15 A. I would assume so, yes.

16 Q. You agree with me that this plan
17 committee did not elect to remove the Fidelity
18 Freedom Funds as of that time period?

19 A. As of that time, that is correct.

20 Q. You have no reason to believe that
21 Pavilion as a 321 advisor was acting imprudently or
22 not fulfilling its fiduciary obligations?

23 A. I would not think that the firm
24 was acting imprudently. I don't know who the
25 advisor was. As I said, this was as we were

DONALD C. STONE

transitioning people over. I can't speak to what they did or do not do. But I would assume because the firm had a sterling reputation and everything, that they were doing what they should be doing. And I also don't know demographics of this plan, so I don't know how that would have fit in this particular case because I didn't recognize the firm's name at all.

Q. So would you agree with me based on the information in table 1 of your report, that that information does not necessitate a removal of the Fidelity Freedom Funds from a plan?

A. I said what it necessitated was taking additional action to understand the reasons for the underperformance. That might or not have led to the removal of the funds depending on what was discovered.

Q. You agree with me that at least this plan did not discover anything that warranted removal as of December 31st, 2017?

MR. ROBERTS: Objection.

A. I can't speak to what they knew

1 DONALD C. STONE

2 or didn't know, because I don't know these
3 people. So I'm not going to put myself in
4 their place. They chose to keep the funds as
5 of this point, that's the only information that
6 I know of at this stage.

7 MS. ENGELMAN: Maria, can we look
8 at 2019 GlassBridge.

9 (Exhibit 9 for identification,
10 GlassBridge 2019 Form 5500.)

11 A. Okay, I'm bringing it up.

12 Q. So this is for the year -- let me
13 know when you have it.

14 A. Okay, I'm on the first page.

15 Q. This is for year January, 2019 to
16 December 31st, 2019. Do you see that?

17 A. Yes.

18 Q. If you go to page 3 of the PDF it
19 shows that Pavilion Advisory Group is the
20 investment advisor?

21 A. On page 3?

22 Q. Sorry, it's page 6. Page 6 of the
23 PDF. Schedule C.

24 A. Yes, Pavilion Advisory Group, yes.

25 Q. If we go back down to Schedule H

1 DONALD C. STONE

2 which is page 37 of 38 all the way toward the
3 end.

4 A. 37 of 38. Okay, I'm on this.

5 Q. You see as of this time period
6 this plan is still offering the Fidelity Freedom
7 Funds Class K. Do you see that?

8 A. Yes, I do.

9 Q. Those are the same funds that are
10 offered in this plan; is that right?

11 A. That's correct.

12 Q. Through May of 2019 you were an
13 executive director at Pavilion; is that right?

14 A. Yes, actually it had switched over
15 to Mercer.

16 Q. What time period?

17 A. Well Mercer acquired Pavilion on
18 November 30th, 2018.

19 Q. Got it. But you were still there
20 in an executive director role until May of 2019
21 I thought you said?

22 A. No, I had no client relationship,
23 I had no responsibilities and I was living in
24 Spain, but I was still on the payroll, yes.

25 Q. During this time period, this 2019

1 DONALD C. STONE

2 time period where this plan is still offering
3 the Fidelity Freedom Funds, that is after the
4 March, 2018 special report that you highlighted
5 in your expert report; is that correct?

6 A. That's correct.

7 Q. Mr. Stone I would like to --

8 MS. ENGELMAN: Maria, can we look
9 at the 2016 Holland & Knight.

10 (Exhibit 10 for identification,
11 Holland & Knight 2016 Form 5500.)

12 Q. Mr. Stone, were you an investment
13 advisor for Holland & Knight?

14 A. I was not.

15 Q. Do you know if Pavilion was?

16 A. That sounds familiar.

17 Q. Do you know who the investment
18 consultant, the 321 investment consultant was
19 for Holland & Knight?

20 A. I do not.

21 Q. Do you have any reason to believe
22 sitting here today that the investment consultant
23 from Pavilion working on the Holland & Knight plan
24 did not fulfill the fiduciary obligation of a
25 321 advisor?

1 DONALD C. STONE

2 MR. ROBERTS: Objection.

3 A. I don't have any reason to think
4 that, no.

5 Q. Do you have any reason to think
6 that the Holland & Knight committee was acting
7 imprudently in any way?

8 A. I don't know anything about that,
9 so I can't speak to them.

10 Q. Do you have the 2016 Holland &
11 Knight 5500 in your Exhibit Share?

12 A. Let me see if it is loaded. Yes,
13 it is there. Let me open it.

14 Q. So this is for the period
15 January 1st, 2016 to December 31st, 2016. Do
16 you see that?

17 A. Yes.

18 Q. If we look at page 36 of the PDF.

19 A. 36 of the PDF, okay.

20 Q. Schedule C.

21 A. Yes, okay. I'm on page 36 of
22 Schedule C.

23 Q. Do you see there that the Pavilion
24 Advisory Group is the Holland & Knight plan's
25 investment advisor?

1 DONALD C. STONE

2 A. I don't. On 36 that is not --
3 hold on. Yes, okay, the previous page, I see
4 it.

5 Q. Then if we go to page 88 of 89.

6 A. I'm there.

7 Q. Do you see that this plan offered
8 the Fidelity Freedom Funds K target date funds
9 with is the same funds that were offered in
10 this plan?

11 A. I do.

12 MS. ENGELMAN: Can we go to 2017,
13 Maria.

14 (Exhibit 11 for identification,
15 Holland & Knight 2017 Form 5500.)

16 A. I'm loading it. Okay, I think it
17 is open.

18 Q. So this is the 5500 for the
19 Holland & Knight Profit Sharing Plan and Trust.
20 This is for the January 1st, 2017 to
21 December 31st, 2017 time period. Do you see
22 that?

23 A. I do.

24 Q. Then if we go to, again, to page
25 36 of my PDF where it shows that Pavilion

1 DONALD C. STONE

2 Advisory Group is the investment advisor.

3 A. Give me a moment. Okay, yes, one
4 of several consultants apparently.

5 Q. Then if we go to Schedule H --

6 A. If I could just stop you there for
7 a moment. I have an a question.

8 Q. Sure.

9 A. So I mean there is four different
10 consultants listed here, no five. Five -- six
11 different consultants listed here and so I'm
12 not sure what Pavilion's role was here as the
13 investment advisor. They were getting only
14 \$15,000, so that is not a typical advisory fee.
15 So I'm not sure if they just take -- they had
16 the relationship before. I'm not sure what the
17 role was for Pavilion at that particular time.

18 I wanted to make a note of that
19 because somebody else -- there a couple of
20 somebody else's that were making considerably
21 more money as consultants on this plan at this
22 particular time. And there is enough advisors,
23 strategic advisors on this plan at the same
24 time.

25 Q. If we go to Schedule H.

1 DONALD C. STONE

2 A. Okay, I'm on Schedule H.

3 Q. It is my page 81 of 83.

4 A. 81 of 83. Okay.

5 Q. Do you see here that the Fidelity
6 Freedom Fund K Funds were offered in this plan?

7 A. I do.

8 Q. And that Pavilion would have had
9 access to the same performance information in
10 table one of your report?

11 A. Yes, but I'm not sure who was the --
12 who was actually driving the ship in this
13 particular case because there are like five
14 consultants and at least two investment
15 advisors as they're broken out on Schedule C.

16 I don't know that -- I don't know
17 what they were providing. But for \$15,000 they
18 were not providing quarterly reporting. So I
19 think it was one of the other -- I'm not saying
20 these guys didn't have the K Funds and all of
21 that, I get it. I don't think Pavilion has
22 probably much of anything to say on whatever
23 was going on with that plan in this particular
24 year because it looks like other people were
25 providing advice to the plan.

1 DONALD C. STONE

2 Q. Do you know one way or the other
3 sitting here today what role Pavilion played?

4 A. No, but for \$15,000, they weren't
5 the investment advisor. I could tell you that.

6 Q. Mr. Stone, you testified earlier
7 that you were the 338 investment advisor to
8 Packaging Corporation of America; is that
9 correct?

10 A. That's correct.

11 Q. What was the timeline that you
12 were the 338 advisor?

13 A. We are talking about the 401-K or
14 the define benefit?

15 Q. The 401-K.

16 A. 401-K would have begun sometime
17 during 2018 and I'm going to -- I'm not sure of
18 the exact timeframe. It was probably during
19 the second quarter that they began to convert
20 over and I actually handed that relationship
21 off to one of my colleagues at the point that
22 they finalized the decision and signed the
23 agreement to have us being a 338.

24 Q. Prior to that were you personally
25 the 321 advisor?

1 DONALD C. STONE

2 A. 321, yes.

3 Q. So during what time period were
4 you the 321 advisor?

5 A. So I had worked with Packaging
6 Corporation of America beginning in 2005, if I
7 remember correctly, but I don't think we took
8 over the main plan until 2007. I did a couple
9 of projects for them back in like 2005, 2006.
10 And I think that -- and worked with a subsidiary
11 and took over the main 401-K plan as advisor I
12 think in 2007.

13 Q. Do you recall what target date
14 funds the Packaging Corporation of America
15 offered?

16 A. I do not.

17 Q. Would it refresh your recollection
18 if they offered the State Street Fund?

19 A. That sounds like that could be
20 correct, yes. That sounds correct.

21 Q. Do you recall if they were the
22 plan QDIA?

23 A. I believe they were.

24 Q. Does that mean that you would have
25 provided heightened scrutiny, as you used that

1 DONALD C. STONE

2 term, with respect to the State Street Fund?

3 A. Yes.

4 Q. Would you have recommended their
5 removal -- in a 321 capacity would you have
6 recommended the committee remove those funds if
7 you deemed them to be imprudent?

8 A. Of course.

9 Q. As a 338 advisor it would have
10 been your fiduciary obligation to remove those
11 funds if they were imprudent in your view?

12 A. Correct.

13 Q. Do you have a recollection of when
14 the plan offered the State Street target date
15 funds?

16 A. I believe they offered them for a
17 number of years, but I can't speak to when they
18 went into the plan and I'm not sure what
19 happened after Pavilion became the 338 and I
20 handed the relationship off to one of my
21 colleagues as part of my kind of exit strategy.

22 So I don't recall if any --
23 because that was actually at the time, as you
24 said, it was after we had signed the agreement
25 and we were in the process of evaluating

1 DONALD C. STONE

2 whether any fund changes were going to be made
3 by us as a 338. But I was not involved
4 ultimately in whatever changes did or did not
5 take place.

6 Q. Sorry, just remind me, when was
7 the time period when you handed off the
8 relationship?

9 A. I believe it was the second
10 quarter of 2018. I'm not a hundred percent
11 sure, but that is pretty close.

12 Q. Do you recall what the benchmark
13 was for the State Street funds?

14 A. I do not off the top of my head,
15 no.

16 Q. Would it refresh your recollection
17 that the State Street Fund offered or have the
18 chosen benchmark as the S&P 500?

19 A. It would be the S&P target date
20 index fund, right?

21 Q. Correct.

22 A. Not the S&P 500.

23 Q. The target date Intex fund;
24 correct.

25 A. That is a typical index that's

1 DONALD C. STONE

2 used pretty much across the board.

3 MS. ENGELMAN: Maria, can we pull up
4 the next document.

5 (Exhibit 12 for identification,
6 Document titled State Street Fund versus
7 S&P.)

8 Q. Let me know when you have it,
9 Mr. Stone.

10 A. What is the document?

11 Q. This document is one that we put
12 together and I will explain it to you.

13 A. The last thing I'm showing is
14 still the Holland & Knight. Okay State Street
15 Fund versus S&P PDF.

16 Q. We went and looked at the
17 performance of the State Street Fund as
18 compared to the benchmark over the time period
19 that you served in both a 321 capacity and also
20 a 338 capacity. Although I know post 2018,
21 second quarter 2018 that is not necessarily the
22 case.

23 I understand that you don't have
24 the underlying metric, but assuming this
25 analysis is correct, will you agree with me

1 DONALD C. STONE

2 that starting in Q3 2016 the State Street funds
3 are underperforming the index on a three year
4 and five-year basis?

5 A. Q3 in 2016, right?

6 Q. Correct.

7 A. Okay, so there were a couple of
8 vintages that appear not to have been, but
9 there are several that -- most of them were
10 underperforming at that particular time, yes.

11 Q. The same is true for Q4 2016?

12 A. That would be correct.

13 Q. The same is true for Q1 2017?

14 A. I have to go to the next page.

15 Three year basis, yes.

16 Q. And on a five-year basis as well?

17 A. Yes.

18 Q. For Q2 2017 would you agree they
19 are underperforming the benchmark on a three
20 year and five-year basis?

21 A. I would.

22 Q. And for Q3 2017, would you agree
23 the State Street funds are underperforming the
24 benchmark on a three year and five-year basis?

25 A. I would. These are index funds,

1 DONALD C. STONE

2 so you would expect them to be underperforming
3 by definition.

4 Q. For Q4 2017?

5 A. Again, most of them are
6 underperforming at that particular point.

7 Q. Q1 2018?

8 A. Okay, most of them are
9 underperforming at that point. And again, my
10 point still stands which is they are index
11 funds so you would expect them to be
12 underperforming this benchmark.

13 Q. For Q2 2018 the same?

14 A. Same thing.

15 Q. And Q3 2018 same thing?

16 A. Yes.

17 Q. And during this time period, so
18 that is, I'm going to count, nine quarters of
19 underperformance on the three year and
20 five-year basis as compared to index. Do you
21 agree with me?

22 A. As compared to the S&P target date
23 index, that's correct. These are passively
24 managed funds. Again, it is not exactly a
25 surprise that they're underperforming a little

1 DONALD C. STONE

2 bit.

3 Q. But you agree with me these funds
4 were not removed from the plan?

5 A. They are going to be evaluated
6 differently as a passive fund. They are going
7 to be evaluated differently. No, they weren't
8 removed from the fund. But I'm saying the
9 evaluation would also be different as well.

10 Q. Tell me about that. Why would the
11 evaluation be different for a passive fund?

12 A. They are passive, they are not
13 actively managed. All they are doing is
14 tracking a benchmark and the only difference
15 here is the benchmark. The S&P target date
16 index and I don't have that information in
17 front of me, but I'm making a good educated
18 guess, is the allocation in the target date
19 index that they are being measure against, the
20 allocations could be slightly different than
21 the actual State Street target date allocations
22 themselves.

23 Also State Street might have
24 been using a different -- the funds that they
25 were using, the asset allocation itself might

1 DONALD C. STONE

2 have included or not included all the different
3 asset categories that are in the S&P target
4 date series.

5 In addition to that, you have
6 transaction costs in the State Street. So you
7 have several things that create a little bit of
8 noise in the data when you look at that because
9 they are passive funds. All they are doing is
10 mimicking an index and they did a very good job
11 of mimicking that index.

12 When we did the analysis, we would
13 go back and look at, you know, what are they
14 doing anything that says they are not tracking
15 their index. If that they are -- that they are
16 not doing what they should be doing. And the
17 funds were inexpensive so I think the
18 evaluation is, not to say that you wouldn't
19 have the conversation with the committee about
20 these versus this benchmark, I think you would.
21 But it is very different than how the way that
22 you evaluate actively managed funds. Totally
23 different.

24 Q. Do you have a specific
25 recollection of having conversations with the

1 DONALD C. STONE

2 committee in a 321 capacity regarding this
3 performance?

4 A. I don't recall specific
5 conversations I would have had years ago with
6 this -- in regard to any quarterly performance
7 or whatever with this particular client. No, I
8 don't remember that.

9 Q. In a 338 capacity do you recall
10 specifically you tracking down sort of
11 understanding what the noise was and
12 understanding what was driving this
13 underperformance?

14 A. This would have been up to my
15 colleague who replaced me. He was heavily
16 involved in the evaluation process as to
17 whether they were going to continue with the
18 State Street target date funds or not and I
19 have no idea what the outcome of that was.

20 Q. You were a 338 advisor prior to
21 Q2 2018; correct?

22 A. In '17 I was a 338 for the defined
23 benefit. In 2018 I was briefly the 338 for the
24 401-K because I handed it off during -- as we
25 got the agreement signed. So I would have --

DONALD C. STONE

technically it was probably a 30-day period that I was actually the 338 since we were handing it off.

Q. Your partner, you don't know what happened -- you don't know what analysis they did exactly?

A. First of all, it wouldn't have just been him. It would have been an entire staff of people that would have been looking at whether or not State Street was in our high conviction list. If State Street was in our high conviction list, if they were in our high conviction list, we are probably would have kept it.

It's a passive choice. It is generally -- it has been very good doing what it does. And the allocation of the State Street target date funds is -- for example, passive funds can be a little tricky. State Street, their target date funds look a little bit different than Blackrock which looks a little different than Vanguards. They are all passive, they all track index, but they are tracking in some case the same index and in

1 DONALD C. STONE

2 some case different indexes.

3 And they also may be making
4 other decision under the covers. For example,
5 Vanguard does not go and invest in small and
6 mid cap international funds because they said
7 it dries up transaction costs. Well, State
8 Street does as far as I know and I'm pretty
9 sure Blackrock does as well.

10 There is some noise in those
11 numbers and I don't think -- you can not
12 reasonably compare a passive index fund to an
13 actively managed portfolio in target date or
14 for that matter any other category and say
15 well, gee, the index fund is underperforming.

16 If it is doing what it is supposed
17 to be doing which is tracking its index, then
18 it is doing exactly what it is supposed to be
19 doing and you don't need to do anything else.

20 MS. ENGELMAN: If I could have five
21 minutes, I likely can wrap up, I just need
22 to look at my notes.

23 THE VIDEOGRAPHER: The time is
24 11:26 and we are off the record.

25 (Recess taken.)

1 DONALD C. STONE

2 THE VIDEOGRAPHER: The time is

3 11:41 and we are on the record.

4 BY MS. ENGELMAN:

5 Q. Mr. Stone, just a couple of other
6 things and then we will wrap up.

7 Are you aware that Packaging
8 Corporation of America and the investment
9 committee of the Packaging Corporation of
10 America was sued in connection with the choices
11 of the fiduciary committee?

12 A. No, I was not the aware of that.
13 Can you tell me what date that was?

14 Q. I can. The complaint was filed in
15 June of 2022.

16 A. Okay.

17 MS. ENGELMAN: Maria, can we pull
18 up the Amended Complaint, please.

19 (Exhibit 12 for identification,
20 Amended Complaint filed in June of 2022.)

21 Q. Do you have that, Mr. Stone? Let
22 me know when you do?

23 A. No, it hasn't loaded yet. Oh
24 okay, it just came across.

25 Q. So this was filed in -- this is

DONALD C. STONE

the Amended Complaint. This was filed in June of 2022. I think the class period goes back to at least 2016. So that is the time period when you were serving as the 321 consultant; is that right?

A. That would be correct.

Q. We don't have to review the whole thing, but I will represent to you that it challenges breach of fiduciary duty claims based on the recordkeeping fees that were paid to the record keeper, the managed account services as well as the prudence of three different investment options.

A. Okay.

Q. So the investment options are, they are listed throughout the complaint, but if you go to page, I guess paragraph 151 there it is a chart and the Invesco Diversified Dividend Fund, The Metropolitan West Total Return Bond Fund and the Victory-Integrity Small Cap Value Fund.

A. Okay.

Q. Do you have any thoughts on whether or not these three investment options

1 DONALD C. STONE

2 were actually prudent options available to plan
3 participants?

4 A. I have not look at those
5 investment options in a long time, so I really
6 have no thought one way or the other at this
7 particular point.

8 Q. Do you have any thoughts about
9 whether or not the recordkeeping fees paid to
10 the record keeper by this plan may have been
11 too high?

12 A. I would very surprised. Again, I
13 haven't looked at the specifics of the complaint,
14 but we negotiated lower fees for every single
15 client that we ever had except one over -- as
16 PSA, so over that 12-year period, only one
17 client were we not able to reduce fees for.

18 That was something that we
19 spent a lot of time doing. So I would be very
20 surprised, but I don't know, like I said, I
21 don't know anything about the complaint.

22 Q. You weren't involved and you
23 weren't deposes in this matter or otherwise
24 involved in any way?

25 A. I have not been contacted by

DONALD C. STONE

anybody.

Q. But you understand that on the date of this complaint essentially you're advice to the committee was at issue in this lawsuit?

A. Yeah, I understand that, yes.

MS. ENGELMAN: I don't have any further questions for Mr. Stone.

MR. ROBERTS: Nothing from me either. Thank you, Mr. Stone.

THE WITNESS: Okay.

(CONTINUED ON NEXT PAGE.)

DONALD C. STONE

THE VIDEOGRAPHER: If there are no other stipulations I will conclude the video recorded for this proceeding.

So here ends media unit number 6, this concludes the video recorded virtual remote deposition of Donald C. Stone taken by the Defendants on Friday, November 1st, 2024. The time is 11:47 p.m. central European time and we are going off the record.

(TIME NOTED: 11:47 P.M. CENTRAL EUROPEAN TIME.)

DONALD C. STONE

Subscribed and sworn to before me
this ____ day of _____, 2024

1

ERRATA SHEET

2

VERITEXT LEGAL SOLUTIONS

330 OLD COUNTRY ROAD

MINEOLA, NEW YORK 11501

3

516-608-2400

4

NAME OF CASE:

DATE OF DEPOSITION:

5

NAME OF DEPONENT:

6

PAGE	LINE(S)	CHANGE	REASON
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SUBSCRIBED AND SWORN TO BEFORE ME

THIS ____ DAY OF _____, 20__.

24

25

(NOTARY PUBLIC)_____
MY COMMISSION EXPIRES:

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, WILLIAM VISCONTI, a Shorthand Reporter and
Notary Public within and for the State of New York,
do hereby certify:


That prior to being examined, the witness named in
the foregoing deposition was duly sworn to testify the truth,
the whole truth, and nothing but the truth;

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter reduced by me to typewritten form and that the
same is a true, correct, and complete transcript of said
proceedings.

Before completion of the deposition, review of the
transcript [X] was [] was not requested. If requested,
any changes made by the deponent (and provided to the
reporter) during the period allowed are appended hereto.

I further certify that I am not interested in the
outcome of the action.

Witness my hand this 11th day of 2024.



WILLIAM VISCONTI

E X H I B I T S

DESCRIPTION	PAGE
Exhibit 1 for identification, Expert Report of Donald C. Stone.	39
Exhibit 2 for identification, 2015 IPS.	171
Exhibit 3 for identification, Q4, 2018 meeting minutes.	241
Exhibit 4 for identification, Q1 2015 committee meeting minutes.	257
Exhibit 5 for identification, Q1 2016 Meeting Minutes.	264
Exhibit 6 for identification, 2016 Deep Dives.	265
Exhibit 7 for identification, May 10, 2017 meeting minutes.	270
Exhibit 8 for identification, GlassBridge 2017 Form 5500.	282
Exhibit 9 for identification, GlassBridge 2019 Form 5500.	288
Exhibit 10 for identification, Holland & Knight 2016 Form 5500	290

Page 315

1

2

E X H I B I T S

3

DESCRIPTION

PAGE.)

4

Exhibit 11 for identification, 292

5

Holland & Knight 2017 Form

6

5500.

7

Exhibit 12 for identification, 299

8

document titled State Street

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Fund versus S&P.

10

Exhibit 12 for identification, 307

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Amended Complaint filed in June

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of 2022.

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Page 316

1 John Roberts, Esquire

2 jcroberts@millershah.com

3 November 11, 2024

4 RE: Laliberte, Mary Et Al v. Quanta Services Inc Et Al
5 11/1/2024, Donald C. Stone (#6983699)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-midatlantic@veritext.com.

16 Return completed errata within 30 days from
17 receipt of testimony.

18 If the witness fails to do so within the time
19 allotted, the transcript may be used as if signed.

20
21
22 Yours,

23 Veritext Legal Solutions
24
25

1 Laliberte, Mary Et Al v. Quanta Services Inc Et Al
2 Donald C. Stone (#6983699)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Donald C. Stone, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Donald C. Stone

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS
15 _____ DAY OF _____, 20____.

16
17 _____
18
19 NOTARY PUBLIC
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25

[& - 2015]

Page 1

&	104 233:11,25 234:2,3,4 239:9 240:13 243:13 10:40 281:11 10:50 281:14 11 292:14 315:4 316:3 11/1/2024 316:5 11501 312:2 117 245:12 11:26 306:24 11:41 307:3 11:47 311:9,12 11th 313:22 12 58:2 175:2 185:4 249:15 249:17 299:5 307:19 309:16 315:7,10 12:45 114:8 13 241:4 131 254:8 135 260:11 276:7,9 286:14 137 260:23 261:5 138 270:22 148 147:7,8 151:4 15 29:6,10 109:16 133:15 133:16 134:11 134:21 184:15	255:16 15,000 293:14 294:17 295:4 150 17:3 41:3 80:22 151 308:18 15th 201:19 16 268:20 17 184:16 269:2 304:22 171 314:7 18 257:16 269:3 180 17:3 1845 2:3 19 39:10 184:16 269:5 19103 2:4 1990s 52:13,23 1st 4:12 152:23 271:8 291:15 292:20 311:8	56:24 57:10,13 64:5,10 210:17 2002/2014 61:6 2004 19:10,15 19:16,21,23 20:7 22:20 25:9 53:22 2005 25:7 296:6,9 2006 296:9 2007 19:10,15 19:18,20,21,23 20:2,7 22:20 25:9,16 296:8 296:12 2008 97:5 2009 158:2 2010 97:5 2013 258:10 2014 53:24 55:3 56:4,24 56:25 57:11 62:13 64:10 129:21,23 130:5 133:12 146:25 147:2,3 148:3,10 151:8 152:17,19,20 152:22,23 153:5,19 191:8 255:2,6,6 260:22 2015 149:6 153:13,15 154:2,6 156:15
0			
02110 2:9 03290 1:4 4:10			
1			
1 1:12 39:13,14 87:18,19 255:10 286:14 287:12 314:4 1,500,000 87:14 1.2 131:11 1/2 161:25 10 18:13,13,18 19:7 63:3 109:13 110:13 110:15 125:6 134:11 258:11 270:17,19 290:10 314:19 314:24 10,000 86:24 100 17:5 55:17 56:6 63:5 80:22 134:4 1000 113:11		2 2 171:24 173:25 314:7 20 63:4 64:22 67:11 82:24 89:21 93:12 102:24 109:16 114:9 255:10 258:11 269:9 312:23 317:15 200 41:4 2002 22:2 49:9 53:15,24 56:24	

[2015 - 299]

Page 2

167:25 169:6	300:2,5,11	241:24 242:8	2022 231:10,13
169:11,14	308:4 314:15	242:17 254:12	231:21,22,24
171:23,24	314:17,25	255:6 259:8	232:5 307:15
173:2,23	2017 131:9	289:18 290:4	307:20 308:3
200:16 201:3	132:19 133:4,4	295:17 298:10	315:12
201:11,15,18	133:4,12,12	299:20,21	2024 1:12 4:12
201:19 202:5	135:22 136:5	301:7,13,15	16:12 149:25
202:25 204:12	149:6 159:19	304:21,23	149:25 150:3,5
208:8 216:5	159:22,24	314:10	150:7,23 191:9
221:25 223:21	160:6,19 184:6	2019 39:9,10	260:22 311:9
234:17,24	199:8 234:21	130:5 149:6	311:19 313:22
236:3,10,18,20	234:25 235:21	152:5,9,14	316:3
238:6 239:25	237:7,13,23	161:18 162:19	20567 313:23
240:4,24	238:3,17,19	210:17 234:25	20ish 101:22
243:16,23	239:20 243:21	288:8,10,15,16	21 26:17
244:9 245:7	244:3 245:21	289:12,20,25	22 216:23
247:18,20	246:4,13,18	314:23	23 62:3
249:14 257:12	247:6,8 260:23	2020 148:4,11	24 167:2
257:15,17,18	270:17,20	148:12 149:3,7	216:22
276:16,23	271:8 276:23	149:17 150:9	241 314:9
279:4 314:8,12	277:3 279:6,8	150:15,19,22	24th 216:15
2016 149:6	281:25 282:3	151:9,11	25 63:4
158:11,13,16	282:13,14	152:24 161:20	257 314:11
158:19,25	283:3 285:15	165:3,25 166:2	264 314:14
159:6,8 200:11	286:7 287:23	166:11,13,19	265 314:16
231:12,13	292:12,15,20	166:21 167:6	270 314:18
232:8 244:18	292:21 300:13	167:13 173:5	28 223:18,19,21
244:20,22,24	300:18,22	184:10,17,23	223:22 225:7
245:3,5,9,10	301:4 314:19	199:12 231:18	282 314:20
264:13,16,19	314:21 315:5	2021 19:12,16	288 314:22
265:13,14	2018 131:16	19:18 20:2,3	290 314:24
266:9,12	132:19 133:5	25:16 26:7	292 315:4
270:12 290:9	136:8 149:6	38:11,20	299 315:7
290:11 291:10	161:5,11,12	216:16,22	
291:15,15	240:20 241:22	218:9	

[3 - 6]

Page 3

3			5
3 16:8,8 87:18 225:4,7 237:17 241:23 242:10 245:25 288:18 288:21 314:9 3-1 245:16 30 64:23 133:21 305:2 316:16 300 27:22 28:17 307 315:10 30th 289:18 31 285:14 31st 16:12 282:14 286:7 287:23 288:16 291:15 292:21 321 49:11,15 53:12 55:8 56:19,21,22 58:4,15,22 59:3 60:16,22 61:17,21,23 62:9 63:8 64:11 67:21 69:13 74:16 129:20 131:23 131:24 132:20 133:14 134:15 136:13 141:6 193:2 208:15 210:16 211:20 283:19,24	286:21 290:18 290:25 295:25 296:2,4 297:5 299:19 304:2 308:5 321s 58:10 330 312:2 338 27:8 30:19 49:11 53:13 56:20 131:7,10 131:17,20,23 132:3,7,10,12 132:13,14 295:7,12,23 297:9,19 298:3 299:20 304:9 304:20,22,23 305:3 34 187:20,23 35 86:18 102:22 190:22 36 291:18,19,21 292:2,25 37 195:18,21 196:25 198:23 289:2,4 38 289:2,4 39 265:17,18 270:7 314:4 3:03 1:12 4:13 3:12 12:14	258:2 285:20 285:21 314:11 40 23:25 80:18 86:18 102:22 133:21 184:2 231:16 401 22:24 25:12 34:6 39:3 49:19 50:17 51:10 53:11 55:8 80:18 121:16 224:9,11 295:13,15,16 296:11 304:24 403 53:11 41 232:20 285:19,23,24 285:25 42 91:16,17,22 92:18,20,22 102:8,9 227:16 43 233:11 239:9 285:23 285:24 286:2 45 102:8,9 47 236:25 237:3,4,15 245:15 4:04 50:8 4:22 1:4 4:10 4:41 69:2	5 12:11 62:14 62:14 64:3 125:5 264:12 266:13,24 267:5 270:13 270:14 314:14 5,000 273:10 50 17:3,5 62:7 63:3 64:24 80:18 81:19,19 126:11,19 135:3 210:7 247:5 500 23:25 62:22 298:18 298:22 50th 82:3 516-608-2400 312:3 5200 104:3,7 55 101:23 102:4,7 5500 281:25 282:3,9 288:10 290:11 291:11 292:15,18 314:21,23,25 315:6 57 101:23
	4		6
	4 62:22 161:25 224:6 225:3,4 257:14,25		6 5:25 62:14 87:20 89:17,25 125:5 259:23 265:14 267:10

[6 - add]

Page 4

282:6,16 288:22,22 311:5 314:16 6-0 146:12 60 23:25 57:6 146:11,14 600 94:6 65 60:25 61:15 72:7 90:23 101:19 102:5 66 147:6,8 6983699 316:5 317:2	90,000 89:19,23 93 216:8 97 232:14,16,17 232:18,19 237:24	accretive 210:8 accuracy 316:9 accurate 43:2 162:10 199:10 277:14 accurately 42:17 107:19 achieve 178:9 179:4,20 180:4 182:2,15 185:13 acknowledge... 317:3 acknowledg... 316:12 acquire 143:5 acquired 285:3 289:17 act 32:7 132:3 211:22 212:21 acting 138:11 219:5 286:21 286:24 291:6 action 127:20 167:22 213:18 259:9 261:8 287:17 313:21 active 96:5,6,8 96:11 271:20 271:22 actively 302:13 303:22 306:13 actual 68:17 113:5 116:18 132:11 133:8	143:8 230:10 257:3 302:21 actually 14:3 16:16,23 19:9 20:18 21:16 29:15 30:20 39:10 54:11 63:12 74:17 75:12 84:3,10 92:22 96:25 104:12 105:14 108:23 113:17 137:19 138:7 138:22 140:19 150:21 152:20 154:12,23 161:20 163:18 164:9 178:16 207:20 211:4 215:19 216:22 219:13,21 226:9 231:10 255:18 257:4 260:14 265:8 270:24 272:11 274:19 279:5 280:19 282:8 283:4 289:14 294:12 295:20 297:23 305:3 309:2 add 55:24 57:13 63:14 67:15 218:23 263:15
7	a		
7 90:6 148:17 270:19 314:18	ability 14:19 able 7:7 76:13 93:15 119:14 120:13 160:8 275:16 309:17 above 206:19 316:6 317:7 absent 201:7 absolute 123:25 127:16 129:13 144:23 absolutely 60:23 76:13 77:24 114:7 120:9 136:24 270:9 284:8 accept 24:3 accepted 227:9 228:6 access 39:16 214:3 294:9 accordance 201:2 account 131:3 140:16,17,17 308:12 accounts 28:2 39:2 224:23		
8			
8 90:6 282:2 314:20 80 80:7,7,10 87:14 806 2:3 81 294:3,4 83 294:3,4 86 200:4,6 88 201:25 292:5 89 292:5			
9			
9 53:16 60:24 288:9 314:22 90 128:3,18,21 129:7			

[added - ahb]

Page 5

added 184:6 258:6 259:2 adding 116:7 119:6 addition 248:13 258:5 272:25 303:5 additional 15:6 67:15 69:22 71:6 73:8,17 84:4,24 85:7 87:25 129:11 129:14 135:7 149:9 163:3 261:7 265:11 287:17 additions 317:6 address 78:14 175:16 244:15 adequate 215:3 adequately 195:4 adjust 101:9 adjusted 65:11 67:3 68:15 144:25 183:19 210:6 241:13 266:3 268:21 administer 3:13 administrative 58:6 139:24 140:11,24 194:4	adopted 160:2 160:6 161:14 161:20 166:3 184:7,16,23 239:12 advance 198:7 advanced 186:7 187:4 201:6 advancement 186:13 advice 97:15 131:24 214:8 294:25 310:5 advised 60:25 advises 131:24 advisor 30:10 45:16 46:25 55:20 58:15 61:21 64:11 67:21 69:14 84:6 95:18 119:4,14 120:13 131:7 131:20,23 153:11,24 156:10,15,23 160:15 172:21 192:4,8 202:3 202:23 208:15 209:16,19 210:17 213:8 216:13 232:22 256:2 286:21 286:25 288:20	290:13,25 291:25 293:2 293:13 295:5,7 295:12,25 296:4,11 297:9 304:20 advisors 49:9 53:17 54:17,24 55:5,13 56:4,7 57:4,7,16,23 58:4 59:16 60:18 63:22 91:5 133:6 209:8 225:18 283:7,19,25 286:12 293:22 293:23 294:15 advisory 282:19,21 288:19,24 291:24 293:2 293:14 affect 204:22 affected 160:11 160:12 afoul 239:12 afternoon 5:12 ag 24:2 113:9 age 79:14 101:18,19 aggregate 198:23 ago 9:19 10:7 10:10 44:21 78:23 97:20	127:5 193:22 196:18 211:19 221:3 304:5 agree 4:25 54:20 55:20 80:11 114:4 167:11 174:12 175:22 176:7 177:24 180:3 181:4,17 182:13 184:3 186:11 187:2 195:23 209:17 220:16,19 241:15 242:15 246:2,17,24,25 247:4 250:15 258:7,16 266:13 270:4 272:5 280:16 286:11,16 287:11,21 299:25 300:18 300:22 301:21 302:3 agreed 3:2,6,10 54:21 190:9 196:16 201:12 229:20 agreement 12:2 80:6 229:20 295:23 297:24 304:25 ahb 1:4 4:10
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[ahmed - appropriate]

Page 6

ahmed 36:15 al 1:6,9 4:8,9 316:4,4 317:1 317:1 alert 177:20 178:2 181:16 186:8,13,20,22 187:4 201:6 239:13 251:23 252:16 253:4 253:22 alignment 182:12 allocation 70:21 90:12,16 90:16,18 267:22 269:6 271:18 273:18 302:18,25 305:18 allocations 103:4 302:20 302:21 allotted 316:19 allow 187:13 221:8 allowed 313:19 alluded 77:12 alluding 178:20 alongside 134:23 alpha 240:8,9 240:19,19 241:8,9	alternatives 156:13 amended 199:17 307:18 307:20 308:2 315:11 america 131:16 131:19 295:8 296:6,14 307:8 307:10 american 96:10 234:5 243:6 amount 219:2 275:16 analysis 78:17 87:25 90:23 108:16 139:19 168:16,19 171:19 177:21 259:13,19 260:2 262:19 265:9 299:25 303:12 305:6 analysts 135:6 analytic 171:10 analytical 171:18 analytics 168:21 238:14 274:11 275:19 analyze 187:25 analyzed 271:14 analyzing 94:2	anniversary 82:3 annual 76:20 175:18,24 annualized 269:23 annually 72:20 72:23 73:3,23 210:24 211:2,2 260:22 anodyne 181:9 192:22 198:17 273:12 answer 6:14,21 23:18 24:20 30:18 31:20 109:10 118:14 122:16,17 129:13 157:4 197:11 212:7 249:11 272:22 274:22,23 275:17 answered 215:13 answers 104:16 anybody 218:18 310:2 anybody's 67:13 aon 27:9 apparently 219:18 293:4 appear 243:9 300:8	appearances 4:22 appearing 4:5 251:24 appended 275:22 313:19 317:7 appendix 149:24 236:22 236:23 238:9 238:11 239:6 276:16 applicable 316:8 applies 174:24 apply 147:11 147:22 151:6 153:3 161:11 appointing 225:17 appointment 217:5 appreciate 153:17 approach 84:15 137:6 190:15 226:18 226:19 239:16 approached 23:14 26:13,16 approaching 18:17 appropriate 65:20 73:24 77:17 85:4,12
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[appropriate - authority]

Page 7

121:4 127:20 145:15,18 156:17 157:23 158:9 160:9 176:4,15 193:16 211:10 247:14 249:22 272:12 273:13 275:10,16 276:18 279:23 appropriately 139:11 276:11 approving 186:6 approximate 16:19 17:23 18:7 approximately 4:13 18:25 27:22 57:3 58:24 61:9 62:5 193:9 approximation 19:5 133:18 195:10 arbitrary 101:19 area 58:8 226:14 areas 14:10 44:12 45:4,6 223:13 argue 181:10 array 262:11	arrived 202:6 articles 40:7 articulate 95:12 ascende 153:10 155:9 156:15 156:23 159:11 162:3 208:19 233:13 234:15 236:14 262:13 264:24 ascende's 261:16 aside 53:9 251:2,8 asked 23:2 26:20 45:19 134:18 155:9 161:14 166:25 168:22 199:24 231:6 263:16 263:22 264:7 277:11 asking 61:12 161:22 169:8 171:15 197:6 198:21,22,25 205:21 241:12 252:24 258:16 262:2 asks 278:2 aspect 21:11 56:12 78:2 aspects 217:3	assessing 265:21 assessment 248:14 asset 63:6 68:7 68:8 70:17,20 71:22,22 73:7 90:12 92:7 94:3,20 103:4 224:20 225:6 266:4,14,17 267:21 302:25 303:3 assets 61:2,9 63:23 68:17 71:22 80:13 128:3 207:8 255:7,15,18 259:20 assign 252:15 253:3 assigned 186:3 assigning 239:13 assignments 137:20 assist 13:15 15:13 associate 8:23 associated 147:23 associates 9:12 9:15 13:25 282:24 284:19	association 4:19 assume 6:21 95:16 172:2 286:15 287:3 assumed 72:7 81:23 assuming 116:25 160:14 168:18 299:24 assumption 41:6 astellas 26:15 27:2,5,6,7 29:13,14,15 attached 166:7 275:22 316:11 attachment 238:6 attempt 88:19 attention 40:7 172:5 204:8 223:17 254:7 256:3 265:16 attorney 316:13 attorneys 2:3,8 3:3 13:22 attractive 110:16 atypical 173:21 authority 222:11,13,17 222:20 223:15 225:22
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[authorized - bat]

Page 8

authorized	b		
3:12	b 40:3,20 53:11	232:9 235:9,15	160:5 161:13
automatically	79:8 132:12	235:24 237:24	162:9 165:23
121:10 122:12	149:24 236:22	239:8 243:22	167:20 190:3
available 51:10	236:23 238:6,9	244:16 245:16	198:11 219:25
66:14 91:19	238:11 314:2	249:14 259:11	249:10 282:25
92:9 144:7,13	315:2	259:18,20	287:12 308:11
176:18 249:25	back 14:9,12	274:13 275:20	basic 64:15
265:25 274:3	14:24 15:5,8,9	277:22 280:6	70:18 92:2
309:2 316:6	16:5 17:20	281:7 288:25	basically 23:12
average 62:19	25:7 40:2	296:9 303:13	23:20 24:4,6
62:21 79:14,14	41:14 43:22	308:3	26:18 27:14
80:16 81:9	46:9,11,18	backbone 15:2	30:17 33:21
88:20 89:11,11	48:23 63:13	background	56:5 63:20
89:13,16,18,19	73:21 83:3	44:14 45:7	67:6 72:12
89:21 90:5,19	84:7,7 92:5	49:7 75:21	85:20 143:17
90:25 104:2,6	104:2,20,20	129:18	149:4 162:19
124:20,21	115:13,25	backtrack	basics 6:9
125:12,13	119:16 120:10	112:6	basis 43:21
averages 89:5	121:12,14,20	bad 86:15,15	61:12,19 68:4
avoid 138:9	122:4 125:19	164:10	69:19 73:11,12
awai 264:24	126:2 128:11	balance 89:13	73:14,23 74:4
aware 7:16	129:17 140:13	89:18,24 90:24	113:23 115:21
10:21 14:7	141:20 148:23	104:3,6,6,10	118:16,21
67:11 92:10	156:4 157:3,6	113:19	119:15 121:8
141:4 167:17	160:15 161:22	balances 79:14	124:23 163:9
202:11,18,25	165:2 168:24	81:10 90:19,20	163:11 175:18
212:23 215:2	171:9 173:25	ballpark 23:23	175:24 185:21
254:23 307:7	174:20 178:7	bank 49:21	187:24 189:24
307:12	178:14 179:15	50:18 53:10	190:2 204:14
awful 75:16	180:24 181:11	barclays 113:9	204:16 232:7
awhile 157:5	181:18 185:3	barely 118:24	268:24 277:3,5
	185:23 187:18	based 23:21	300:4,15,16,20
	206:6 214:19	92:8 99:24	300:24 301:20
	221:25 227:8	116:14 119:18	bat 129:13
		125:24,25	

[bates - bolded]

Page 9

bates 42:22 175:4	283:21,24 286:20 290:21 296:23 297:16 298:9	benchmarks 68:6 200:23	131:12 133:24 134:2,8,10,13 255:16
beacon 234:5 243:6	bell 16:13	benefit 30:16 81:24 104:14	binary 239:15
bear 100:8,9	benchmark 68:5,10,11 108:3,6 109:6 112:18 113:4 115:20 116:9 118:16 120:7 121:7 122:11 127:25 128:2 128:17 156:25 170:8 176:4,10 183:5,14,25 184:22 185:7 185:20 201:13 202:3,23 204:25 205:11 205:23 208:9 247:22 248:9 248:11,23 269:11,15,23 276:13,18 277:16 278:3 278:21 279:2,8 280:14 298:12 298:18 299:18 300:19,24 301:12 302:14 302:15 303:20	131:10 132:18 142:25 143:4 295:14 304:23	bio 130:21
beg 31:19		best 15:16 32:7 35:5 42:10 68:11 99:14 138:12 139:12 139:12 149:14 204:20 226:18 230:9 269:10 269:14	biography 129:16
began 131:10 146:24 147:2,4 231:12 295:19			bit 15:5 20:19 32:24 36:13 48:13 49:6,8 80:9 95:25 106:5,12 115:18 170:25 173:15 217:11 251:6 302:2 303:7 305:22
beginning 7:12 14:8 244:21 296:6		better 15:2 24:9 33:22 99:8 100:7 129:9 130:23 165:19 205:23 209:2 279:11 279:13 280:2	blackrock 30:18 35:21,22 96:8 305:22 306:9
begins 4:3 14:14		beyond 231:18 231:24	blah 99:8,8,8 179:17,17,17 179:17
begun 295:16		big 21:18 65:8 81:10 91:14 99:17 133:19 141:2 256:24	blend 96:6
behavior 149:5 155:25 157:20 158:4,6 159:5		bigger 124:15 138:25	blended 271:21
belief 185:18		bill 69:7 128:11 148:22 177:7	blip 84:13
believe 11:21 11:22 21:4,21 22:5 26:14 35:15,20 36:4 36:23 37:25 38:7 67:19 70:3 97:3 116:21 143:9 146:24 147:2 153:10 159:8 162:18 166:8 195:4 202:10 205:13 212:5 216:6 235:23 241:22 245:2 256:25 258:21	benchmarking 209:8	billion 60:25 61:15 62:4,24 63:2 104:12	blithely 171:16
			blown 213:9
			blur 36:13 43:9
			board 222:14 280:5 299:2
			bob 89:3,3 90:4
			bockius 2:7
			bolded 248:4,4

[bolt - c]

Page 10

bolt 100:18	bringing 59:7	56:5 62:3,12	74:1 75:1 76:1
bond 24:2	59:14 102:7	91:20,21	77:1 78:1 79:1
267:9 308:21	127:14 256:2	142:18 259:15	80:1 81:1 82:1
bonds 39:5	288:11	285:3	83:1 84:1 85:1
113:7,10,16	broad 22:6	businesses	86:1 87:1 88:1
book 107:10	82:21 88:10	54:21 55:21	89:1 90:1 91:1
boston 2:9	102:16,18,20	busy 33:17	92:1 93:1 94:1
bottom 163:2	113:9 262:11	buy 93:2,22,23	95:1 96:1 97:1
186:2 197:20	brodsky 2:15	95:9 132:12	98:1 99:1
237:4,15	4:15	buys 143:18	100:1 101:1
255:22 264:20	broken 294:15	c	102:1 103:1
271:10,11	brought 54:18	c 1:17 2:2,5 4:4	104:1 105:1
bought 282:24	64:5 189:23	5:6 6:1 7:1 8:1	106:1 107:1
box 190:15	196:8,8	9:1 10:1 11:1	108:1 109:1
boxes 274:18	build 54:23	12:1 13:1 14:1	110:1 111:1
bracketing	90:7	15:1 16:1 17:1	112:1 113:1
276:22	building 92:9	18:1 19:1 20:1	114:1 115:1,4
bravo 1:18 4:5	built 54:23	21:1 22:1 23:1	116:1 117:1
breach 308:10	bullet 204:11	24:1 25:1 26:1	118:1 119:1
break 6:10,15	214:24 217:17	27:1 28:1 29:1	120:1 121:1
6:16 66:18	218:13,24,25	30:1 31:1 32:1	122:1 123:1
87:12 113:13	219:9 220:2,5	33:1 34:1 35:1	124:1 125:1
115:12,13,15	220:8 224:14	36:1 37:1 38:1	126:1 127:1
230:16 231:5	225:16 241:11	39:1,15 40:1	128:1 129:1
232:12 244:16	241:14 242:25	41:1 42:1 43:1	130:1,20 131:1
281:7	245:16,23	44:1 45:1 46:1	132:1 133:1
breakdown	247:11 251:18	47:1 48:1 49:1	134:1 135:1
267:19	bullets 183:17	50:1 51:1 52:1	136:1 137:1
brief 191:25	225:3,11	53:1 54:1 55:1	138:1 139:1
193:19 216:11	bunch 8:16	56:1 57:1 58:1	140:1 141:1
briefly 9:19	275:19	59:1 60:1 61:1	142:1 143:1
304:23	business 21:25	62:1 63:1 64:1	144:1 145:1
bring 48:5	25:21 26:9	65:1 66:1 67:1	146:1 147:1
58:25 78:13	32:4 33:23	68:1 69:1 70:1	148:1 149:1
222:2	54:19 55:18	71:1 72:1 73:1	150:1 151:1

[c - carve]

Page 11

152:1 153:1	222:1 223:1	291:22 292:1	capabilities
154:1 155:1	224:1 225:1	293:1 294:1,15	64:12 142:19
156:1 157:1	226:1 227:1	295:1 296:1	142:20
158:1 159:1	228:1 229:1	297:1 298:1	capability
160:1 161:1	230:1 231:1	299:1 300:1	14:20 80:23
162:1 163:1	232:1 233:1	301:1 302:1	capacity 49:12
164:1 165:1	234:1 235:1	303:1 304:1	58:22 59:4
166:1 167:1	236:1 237:1	305:1 306:1	61:17 65:22
168:1 169:1	238:1 239:1	307:1 308:1	95:17 283:19
170:1 171:1	240:1 241:1	309:1 310:1	297:5 299:19
172:1 173:1	242:1 243:1	311:1,7,16	299:20 304:2,9
174:1 175:1	244:1 245:1	313:1,1 314:5	captive 21:9
176:1 177:1	246:1 247:1	316:5 317:2,4	capture 65:13
178:1 179:1	248:1 249:1	317:12	68:21 70:2
180:1 181:1	250:1 251:1	calculate 62:21	197:18
182:1 183:1	252:1 253:1	calculated	captured 70:2
184:1 185:1	254:1 255:1	66:25	194:15 195:5
186:1 187:1	256:1 257:1	calculation	250:16
188:1 189:1	258:1 259:1	68:14	care 12:12
190:1 191:1	260:1 261:1	call 53:17	137:5,8
192:1 193:1	262:1 263:1	62:16 69:7	career 86:19
194:1 195:1	264:1 265:1	71:12 83:2	careful 137:4
196:1 197:1	266:1 267:1	86:2 93:22	carefully 208:5
198:1 199:1	268:1 269:1	152:22 161:25	carlo 80:19
200:1 201:1	270:1 271:1	209:12,12,13	82:17 85:13,19
202:1 203:1	272:1 273:1	234:7 248:10	86:8 112:20,22
204:1 205:1	274:1 275:1	250:25	carolyn 2:16
206:1 207:1,15	276:1 277:1	called 54:17	46:11
208:1 209:1	278:1 279:1	159:16 188:18	carries 155:22
210:1 211:1	280:1 281:1	197:5	156:2 157:20
212:1 213:1	282:1,5 283:1	campbell 2:16	158:4
214:1 215:1	284:1 285:1	46:11 162:23	carry 158:6
216:1 217:1	286:1 287:1	cap 103:12,12	carve 54:22
218:1 219:1	288:1,23 289:1	242:12 306:6	55:22
220:1 221:1	290:1 291:1,20	308:22	

[carved - chart]

Page 12

carved 284:6	263:18 264:4	ceo 222:15	73:14 83:23,24
case 1:4 4:9	275:5 287:8	certain 21:8	84:22,23
7:13 11:20	294:13 299:22	41:10,16 43:6	142:19,21
12:22,24 13:8	305:25 306:2	46:12 54:4	143:13 152:6
14:9 17:2,4	312:4	59:8 63:11,14	157:21 161:10
19:6 20:23	cases 15:3,25	69:23 88:20	187:7 199:22
22:4,16 23:3	16:24 17:2	99:21 101:3	201:8 212:7
23:10,11,11,16	18:22,25 19:2	107:9 112:17	216:3 231:20
23:24 24:11,24	20:6,10,13,16	168:14 171:7	232:4,7 234:25
25:19 26:14,17	20:18,21 22:18	222:23 228:24	252:14,19
26:19,21 27:3	22:21 25:8,20	268:16 284:8	253:2,10,12,18
27:11,18,20	26:5,12 29:7	certainly 38:15	253:25 258:20
29:19 30:4,24	29:11 37:17,21	73:9 80:21	272:2 274:23
31:2,6,10,23,25	38:6,16 47:12	84:17,24 92:25	312:6
32:18 33:4,9	61:14 124:2	94:22 117:9	changed 54:2
33:12,19 34:15	126:2 140:11	118:12 122:18	69:24 83:6
34:16,18,20	162:10 195:6	123:23 140:25	95:25 143:10
35:2,4 36:5,8	197:22 222:22	159:24 193:7	152:5 158:7
36:15,17,25	226:10,23	209:9,16 212:2	159:6 231:13
37:6,13 40:12	228:15	218:18 220:2	235:4,4 255:4
40:17 43:7,11	cash 103:6	229:10 280:22	258:9
52:11 71:10	castro 2:11	284:5,13	changeover
82:22 83:9	catch 278:17	certify 313:7,20	231:8,9 235:18
86:8 87:17	categories 43:6	cfa 67:11	changes 70:15
101:11 109:15	43:10 303:3	chair 50:23	70:16 84:14
119:3 125:7	category	challenged	102:20 202:4
126:17 156:3	306:14	147:12,15	202:24 298:2,4
158:6 163:6	causing 127:8	151:7,13 153:4	313:18 316:10
167:16 170:15	cautions	167:16	317:6
179:12 190:12	252:13,25	challenges	changing 36:9
190:13 193:14	celebrated 82:3	308:10	51:11 162:15
194:8 208:7	centerra 34:20	chance 104:9	235:2
214:17 215:12	central 1:13	231:4	charge 262:3
215:21 221:18	4:13 311:9,12	change 64:13	chart 308:19
226:22 259:20		64:16 70:21	

charter 209:24 220:13,17,20 220:22 221:7 221:10,11,19 221:22,23 222:5,10,25 223:14,25 charts 75:24 275:7 check 42:21,23 190:14 277:13 277:18,20 checked 277:17 checks 42:25 chicago 25:5 childish 213:14 choice 78:21 79:7,8 81:15 85:9,11 88:2 98:13 99:11,15 132:7 158:9 211:10 273:13 273:14 279:23 305:16 choices 27:23 81:17 91:15 102:21 307:10 choose 47:24 81:12 98:23 107:2,4 108:8 125:18 156:12 choosing 32:8 47:10 73:20 chose 23:20 211:20 288:4	chosen 47:7 155:23 298:18 chunk 21:18 circumscribed 222:22 circumstance 163:10 263:25 circumstances 85:2 190:11,12 228:11 citation 47:21 cite 47:10,12,17 cited 149:24 cites 14:18,21 47:3,8 48:24 49:3 claim 192:16 claims 308:10 clarification 230:8 clarified 244:17 clarify 6:20 125:3 class 68:7,8 94:4 96:25 128:4 146:22 146:23 148:6,7 148:8 155:5,13 155:24 156:2 157:16,21 158:5 276:22 285:16 286:5 289:7 308:3	classes 92:7 94:20 224:21 225:6 266:4,14 266:17 clear 24:23 55:4 88:12 111:16 131:22 138:9 157:15 180:13 181:22 192:11,19 194:11,12 222:13,24,25 223:15 226:8,9 226:22 229:25 236:8 237:21 253:13 272:6 clearly 222:10 client 30:13 59:22 60:13 61:25 62:13,19 62:22 63:6,21 64:8 71:7,15 71:20 72:21 74:4 77:11 91:12 92:2 93:14,17 98:12 98:19 109:5 124:18 131:13 134:16,17 137:7,9 144:13 145:8 262:6 263:16 281:17 283:3,5,7 289:22 304:7 309:15,17	clients 54:16 55:25 56:2,16 56:16,17 57:4 57:9,14 58:4,9 58:15,18,22,24 59:2,3,7,14 61:13,14,16 62:6,7,9,16,17 62:23,25 63:14 64:4,14 66:2 69:14,18 71:18 71:21 72:19 73:3,5 76:17 76:21 77:9 93:10,15 96:23 97:3,13 98:20 131:8,11,25 133:2,12 134:22 135:23 136:5 137:5 139:5 141:17 145:5 193:8 210:18 211:13 212:3 213:16 221:6 261:16 263:2 285:5 close 18:10 102:15 136:2 283:4 298:11 closer 117:21 clue 75:19 cluttered 66:5 coast 54:17 55:5,12,17,24 56:7,19 57:7,8
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[coast - committee]

Page 14

58:11,14 63:22	198:16 227:8	50:21,23,25	175:16,23
64:12 115:12	comfort 45:24	51:3,6,9,24	176:8 177:19
coaster 98:4	129:4	52:3,7,19 53:6	177:24 178:11
colleague	comfortable	53:13 67:17,20	179:2,14
141:23 304:15	84:20 85:8	72:13 73:10	180:25 181:15
colleagues	88:4 95:11	74:8,16 75:2	182:4,7,24
145:10,11	97:23	76:6 78:7,10	187:7 189:14
295:21 297:21	coming 31:13	82:8 84:5,18	191:2,3 192:5
college 46:4	47:16 70:6	85:8 99:13	192:7,9 193:14
color 275:7	78:12 81:20	101:6 104:25	193:19 194:14
colors 75:16	85:24 171:9	110:7 111:5,6	201:7,18 202:4
combination	222:13 234:12	111:12 116:13	202:6,23 203:8
107:5	commemorate	117:9,14,25	203:19,20
combinations	82:4	118:21,23	204:7,18
112:25 113:2	comment	119:23,23	205:25 208:18
combining 17:9	149:12 151:15	120:5,11,20	208:23 209:24
come 7:17 18:4	158:20 161:2	125:16 126:24	212:20 214:12
18:10 24:19	161:21 165:20	127:15 128:4	214:16 215:11
25:20 45:25	192:13 193:25	128:25 130:19	215:23 216:4,7
46:22 65:15	commentary	132:3,9 138:2	216:15 217:6
75:15 80:18	28:19 151:16	138:4,6,8,15,16	218:5 219:14
82:10 84:7	commented	139:2,16,18,24	221:4 222:12
91:15,21 106:4	193:15	140:2,9,13	222:17,21,22
107:6 119:9,10	commenting	146:17 147:11	223:24,25
138:15 139:4	148:13 149:3	147:21 151:5	224:10,11
140:8 165:2	comments	151:12 153:2	225:21 226:3
170:17 203:11	158:16	153:19 156:10	227:4,23
203:22 214:19	commission	159:13 160:5,7	228:20,24
227:20 239:23	312:25	162:19,22	229:6,9,15,19
249:10 270:21	committee 8:18	163:4 164:14	230:3 232:21
271:7 281:7	8:21,24,25	165:5 166:11	233:16 235:9
283:8	27:24 43:24	167:8,23 168:6	239:17 241:16
comes 70:23	45:13,15,22	169:23 171:5	242:15 244:14
75:2 87:16	46:24 49:13,18	172:12 174:13	245:9 248:17
114:3 126:2	49:19,24 50:17	174:15,19,25	248:22 249:6

[committee - conclusion]

Page 15

251:4,10	263:21	comparing	162:11
253:24 255:22	common 91:4	176:15 205:16	compliant
256:4,10 257:3	92:15 109:17	247:13 249:21	109:23 123:24
257:12,15	139:14 141:16	comparison	162:12 164:2,7
258:8 260:19	200:3 227:9	70:2 71:12	199:13 235:11
260:25 261:6	279:16	72:3,14 107:18	235:16
261:14,19,23	commonly 67:5	118:16 267:3	complicated
262:9,17 263:5	communication	267:16 269:10	56:11 65:6
264:5,25 265:3	17:20	269:14 271:14	140:22 218:16
265:8 270:6,24	companies	278:3,4,6	comply 159:7
271:13,19,24	64:25 65:4	comparisons	component
272:7 276:11	121:15 140:19	71:24,25,25	252:13
280:17 286:17	company 22:2	176:4,5,10	composition
291:6 297:6	25:3 27:18	compensation	83:6 267:19
303:19 304:2	49:14,16,22	30:20 38:15	compound
307:9,11 310:5	79:17 81:7	competitive	199:25
314:12	89:12,20	179:16	comprise 124:7
committee's	130:10 219:7	competitors	computer 12:7
78:2 155:3	comparators	265:6 271:16	concern 75:13
166:21 240:15	267:12 268:5,9	complaint 13:2	235:19 259:22
256:3	268:13,24	307:14,18,20	concerned
committees	compare 71:13	308:2,17	116:19 192:25
49:11 53:11	108:20 205:12	309:13,21	255:8
54:8 65:20	306:12	310:4 315:11	concerning
66:20 69:18	compared	complete	111:6 256:5
71:15 75:18	112:17 122:10	313:14 317:8	concerns
76:8 101:13	156:24 190:18	completed	124:25 194:14
102:2 103:18	190:20 205:11	316:16	255:23
104:23 106:14	205:11,13	completely	conclude 311:3
106:15 123:6	217:15 267:12	125:8	concluded
125:20,23	268:4,8,12,24	completion	264:24
137:12,14,17	269:10,14,23	313:16	concludes
138:24 141:7,9	279:8 280:13	compliance	311:6
190:13 193:3	299:18 301:20	119:16 159:15	conclusion
212:5,7,23	301:22	159:16 160:9	126:14 127:3

[conclusion - contractors]

Page 16

147:10 151:12 168:10 191:19 263:20 274:2 conclusions 32:17 147:5 151:4 conduct 177:20 210:18 conducted 5:11 conducting 265:4 cone 85:25 86:5 conferences 130:18 confidential 58:20 confirm 48:19 48:21 159:10 252:7,8 conflict 30:10 32:12,16 conflicted 27:16 32:6 237:7 245:22 246:14 conflicts 219:8 confuse 35:22 confusing 226:6 249:5 conjunction 270:7 connection 13:7 38:11 41:25 43:7 44:5 60:9	176:24 254:20 307:10 consecutive 186:5,8,14,20 200:17 201:4 consensus 226:4,7,12,15 226:17,21 227:2 230:6 conservative 90:17 consider 45:10 51:23 74:9 76:12 82:9 84:19,21 97:15 98:15 106:18 118:11 156:13 181:15 182:25 188:11 215:2,4 216:18 241:16 241:18,19 251:22 253:21 274:6 276:2 280:18 considerably 293:20 consideration 82:20 101:2 105:2 183:4 241:16 considerations 82:10 considered 40:4 53:6 74:17 76:11	106:15 257:2 261:24 270:24 271:20 272:7,9 considering 83:23 93:10 262:18 consistent 61:21 166:12 174:16 187:15 189:3,7,12 190:5 231:15 233:19 250:10 270:5 consistently 278:25 construction 94:12 271:17 273:19 consult 236:9 277:21 consultant 43:24 49:10 52:9 53:12 60:4,5,10,12,17 63:8 74:17 84:6 91:11 92:14 97:15 104:23 109:25 129:20 134:15 134:24 135:16 136:13 141:6 193:2 208:24 290:18,18,22 308:5	consultants 57:18,22 60:22 65:25 80:22 93:21 141:4,12 210:19 293:4 293:10,11,21 294:14 consulting 25:24 26:8 54:7 91:5 consumer 105:22 contact 37:24 contacted 309:25 contacts 11:8 contain 40:11 contains 197:4 contemplated 248:18 contention 32:5 context 75:7 145:19 continue 85:4,6 101:8 132:21 202:2 211:17 304:17 continued 54:23 130:19 130:22 202:22 310:13 continuing 225:12 contractors 57:17,20
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[contradicts - counsel]

Page 17

contradicts 182:6	conviction 93:4 93:24 94:8,14	148:11 150:3 151:9,10,14	299:25 300:6 300:12 301:23
contributing 89:17	94:18 95:23,24 96:4,15,22	157:16 166:3,4 173:2,7 177:12	304:21 308:7 313:14 317:8
contribution 79:15,16 89:12 89:25 131:17 132:19 142:22 143:6	305:12,13,14 cookie 189:21 copies 316:14 copy 5:9 11:17 39:20,24	178:25 179:5 180:5,6 183:17 185:16,17 187:4,5 188:25 191:5,6 195:5 196:3 200:12 201:15,16 203:6 206:22 207:2,3 208:20 208:21 209:20 218:3 220:13 226:4 230:12 231:19 232:2 234:17,18,21 238:4,5 240:3 244:25 245:24 247:19 248:11 248:12,18 250:23 253:5 254:5,18,23 255:3 260:24 261:21 263:3 263:13 267:17 268:2,6 269:16 269:21 274:4 278:4,5 284:9 286:19 289:11 290:5,6 295:9 295:10 296:20 296:20 297:12 298:21,24	corrected 156:2 corrections 317:6 correctly 28:15 31:16 35:16 71:8 117:4 153:11 296:7 corresponding 277:2 costa 1:17 4:5 costs 303:6 306:7 counsel 4:21 7:25 8:23 9:3,7 9:16 12:13 13:10,17,19 14:3,6,22 15:12,19,22 16:16 17:12,24 18:14 23:13 24:18 26:25 29:25 31:10,11 33:11 34:25 36:19,23 41:7 41:11 42:14 43:12 48:4 50:7 59:19,20 59:22 115:14 149:13 151:20 151:22 196:7 196:11 232:11
control 105:18	corp 49:21 51:10 131:16		
conversant 75:12 76:14	corporation 54:12 131:19 132:15 138:25 295:8 296:6,14 307:8,9		
conversation 9:14 17:16 43:20 72:15 99:12 110:19 117:8,14,24 118:19,20,22 119:20,22 120:19 164:24 180:20 196:6 196:17 214:20 256:19 280:7 303:19	corporations 55:3 139:25 correct 5:20,22 5:23 6:4,5 9:24 10:12 11:11 18:23,24 19:25 20:4 21:15,16 24:15 25:17,18 26:9,10,13 27:3 30:23,25 47:5,6 48:24 49:2,20 50:19 54:9,10 57:2 61:3 117:6,7 122:24,25 123:3 128:20 129:21,23 130:2 131:21 135:24 142:7		
conversations 13:6,10 14:7 17:13,19 41:12 43:9 76:16 211:4 212:18 212:19 303:25 304:5			
convert 295:19			
conveyed 221:23,24			

[counsel - date]

Page 18

277:11 316:14 counsel's 14:8 count 9:20 236:5 301:18 counting 91:18 country 312:2 county 313:4 couple 6:9 8:20 9:11 13:9 20:16 46:10,12 54:2 58:8 66:18 68:6 82:6,24 97:8 97:19 105:7 124:11 131:3 134:12 137:20 159:7,17 172:12 214:23 215:6 216:4,6 231:6 233:8 268:19 269:18 277:23 293:19 296:8 300:7 307:5 course 6:20 7:20 14:17 46:24 61:15 110:17 208:16 209:13 297:8 court 1:2 3:15 4:11,18,22,24 4:25 5:3 7:2,3 68:23 cover 19:4 220:8 223:14	245:3 covered 62:6 77:5,6 111:25 148:2 221:20 223:6,13 271:16 covers 84:11 152:25 245:4 306:4 crazy 170:22 create 41:8 63:18 86:4 88:19 111:2 303:7 created 24:4,4 25:24 103:3,15 245:24 262:14 creating 14:24 18:14,16 creation 15:14 18:18 criteria 52:20 53:6 74:3 117:18 163:17 167:8 175:9,12 181:15 182:21 182:24 183:11 183:12,17 184:4 185:5,12 186:7,12 201:3 201:6,14 254:8 criterion 251:21 critical 45:17 76:5,7 77:13	78:4,18 79:11 critically 78:25 criticizing 248:16 crossed 194:22 cs 316:15 current 157:20 271:15 currently 5:22 89:3 cursorry 191:4 191:14,20 custom 30:6 91:18 customarily 223:24 customize 144:9 customized 77:11 cutter 189:21 cv 1:4 4:10 54:11 130:21	270:24 272:7 274:10 303:8 date 10:8 16:12 19:13 31:3 32:2 35:7,9,13 36:10 37:2,5 37:13 69:21 70:10,13,17 71:2,7,14 72:6 72:7,22 73:5 73:17,20 76:19 76:22 77:6,7 77:12,16,21 78:3,5,8,21 79:3,10 80:2 81:6,12 82:9 82:12 83:10 86:9 87:22 88:22,24 91:13 91:17 92:15 93:18 94:17,22 95:6,22 97:11 100:4 101:3 108:13 109:12 112:7 122:22 122:23 123:8,9 123:13,15 126:7,10,13,23 127:24 128:17 128:19,21 133:8 141:22 142:4,5,6,10 168:14 176:17 179:8,9 181:5 181:7 205:15
		d	
		d 5:6,6 21:21 115:4,4 130:20 daf 242:8,11 dangerous 226:14 data 66:17 144:10,11 145:3 171:10 202:14 214:4 250:16,17,18 250:18,23	

[date - definition]

Page 19

216:5 247:15 249:24 260:18 261:9 262:12 264:23 265:21 266:7,21 267:5 271:14,23 272:2,8,10,17 276:17 277:2 292:8 296:13 297:14 298:19 298:23 301:22 302:15,18,21 303:4 304:18 305:19,21 306:13 307:13 310:4 312:4 317:12 dates 158:18 218:8 255:17 day 7:11 15:9 28:5 30:6 196:15 213:15 213:18 305:2 311:19 312:23 313:22 317:15 days 8:20 9:18 65:17 316:16 dcia 130:20 de 2:11 deal 140:3,4 194:5 283:4 dealing 254:24 dealt 28:13 254:15	decades 210:10 december 282:14 285:14 286:7 287:23 288:16 291:15 292:21 decide 92:14,15 102:10,18 107:3 170:22 196:4,13 decided 23:13 25:18,19 26:4 55:21 144:12 206:2 212:20 214:2 228:19 deciding 196:11 decision 45:23 74:10 76:6 99:9 119:24 127:10 188:6 188:11 189:21 190:3 192:24 198:19 199:21 201:7 202:7 223:2 227:5,24 228:4,12,21,23 228:24 229:2,3 229:7,9 230:4 230:5,8 262:4 295:22 306:4 decisionmaki... 132:2 198:18 decisions 45:14 74:18 125:24	125:25 132:11 141:18 162:9 192:11,12,21 194:10 222:23 228:8 declare 317:4 decline 242:19 dedicated 141:15 deemed 158:25 160:19 297:7 317:6 deems 225:23 deep 71:12 83:9 135:8 168:18 259:19 260:18 261:2,9,20,23 265:13,15 266:9 270:5,25 272:8,10 279:21 314:17 deeper 83:8 156:11 260:2 262:10 280:8 defaulted 207:17 defend 23:16 23:18 defendant 21:14 defendants 1:10,17 2:8 4:7 4:9 10:19,20 11:10 20:23 311:8	defense 22:11 22:13,25 23:3 23:15 24:7,13 24:19 29:23 31:8 33:9 34:22 36:17 defer 117:23 deference 240:6,17 deferral 89:11 deferring 89:4 deficiencies 158:12 197:14 deficiency 200:8 deficient 194:25 195:3 195:25 197:5,7 197:13 define 189:15 295:14 defined 81:24 104:14 131:10 131:17 132:18 132:19 142:22 142:25 143:3,6 189:14 304:22 defining 150:16 definitely 32:15 124:9 160:11 190:13 273:20 definition 145:25 180:7 301:3
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[degree - different]

Page 20

degree 129:4 214:22	189:11 205:9 206:12,15	described 82:16	256:9 275:10 279:22
delay 236:7	212:20 255:9	description 314:3 315:3	determined 169:24
delegate 222:11	274:24 287:20	design 140:4,25	determining 101:2
deliberate 76:2	depends 17:2	designed 81:6	detour 129:17
deliberated 255:24	122:20 163:22 193:24,25	desk 105:15	develop 48:20
deliver 219:25	221:14 260:8	despite 25:22 101:11 203:16	developed 81:18
delivered 219:13,21,24 220:4,5	deponent 312:5 313:18 316:13 317:3	detail 88:6 210:13 219:2 222:16	developments 188:2
demographic 79:2,21 88:16 112:23	deponents 5:2 8:13	detailed 175:20 200:22 217:9	dfa 234:5 240:7 240:18
demographics 78:16,17 275:4 287:7	deposed 5:18 6:4,8 7:17 34:15,16	details 22:8 35:11 36:11 37:3 52:22 53:3,5 54:6 171:4	dictate 63:7 129:13 214:9 249:12
demonstrate 228:7	deposes 309:23	dictates 129:14 247:12	difference 55:11,14,15 65:8 105:17 131:23 158:3 262:7,8 302:14
demonstrates 278:9	deposing 316:13	detected 242:16	differences 266:4
department 92:5 209:11,17 209:21 210:12 227:20	deposition 1:16 3:11 4:6 7:10 7:16 8:2,10,12 8:15 9:5,8,17 17:8 44:5,7 47:3 172:13 198:7 261:11 311:7 312:4 313:9,11,16	detection 116:9	different 20:20 31:17 36:3 37:14 45:20 46:23 48:16 56:16,17 64:24 65:3 67:12 68:13 78:24,24 78:25 82:23,25 86:10,21 91:5
depend 275:2,3	depositions 7:20 43:23 44:24	determination 118:2 127:20 151:18 171:15 184:14	
depended 17:19	depth 105:9 169:3 201:20 259:13	determine 93:8 99:21 158:8 168:16 178:11 178:16 182:4 201:21 211:9 211:14,17 224:19 225:5 228:12,17,18	
depending 15:4 17:3 61:23 68:7,7 90:17 91:2 111:14 120:15 123:18 124:2 134:16 135:20 144:11			

[different - documents]

Page 21

91:16,17 92:21	differently	discussed	314:17
93:6,12 94:17	102:12 123:3	118:13 194:2	dividend
96:20 104:17	125:20 144:20	201:20 255:23	308:20
105:12 107:24	189:15 205:19	256:10,11	division 50:2
108:2,22	302:6,7	265:2	document 13:4
109:11 121:16	difficult 25:21	discussion	40:20 42:24
121:17 122:24	61:11 75:25	124:17 271:16	43:19 111:13
123:2,14	diligence 131:2	discussions	111:14 150:4
125:24,25	155:11 265:4	194:12	153:16 183:6
127:2 144:2,4	diminish	disengaged	186:16 187:16
144:5,5 153:18	102:23	141:7	198:22,24
159:11,16,17	dinner 115:13	distinct 224:21	216:23 217:9
159:18 160:10	dinnertime	distinction	217:15,18
161:24,25	114:11	64:19	218:2 221:11
162:6,24	direct 116:3	distributed	221:14,15,20
163:10 170:13	165:19 216:9	261:15	222:5 238:15
180:6,19	directing 135:9	distribution	241:7 242:13
189:10,25	director 130:7	39:4	242:20,22
199:24 204:5	283:15 289:13	district 1:2,3	252:22 258:4
207:15 208:2	289:20	4:11,11	262:5 264:15
215:10 217:3,7	disagreeing	dive 71:12 83:9	264:17 266:13
217:20 218:6	180:8	135:8 168:18	271:11 282:6,9
218:21 222:15	disagreement	262:10 270:5	282:17 285:11
224:21 227:16	180:10	272:8,10	285:19 299:4,6
235:6 249:11	disconnect	diversification	299:10,11
262:13 263:17	19:23 164:3	92:3 271:19	315:8
263:25 264:8	discover	272:20 273:18	documentation
273:10 278:15	287:22	diversified	152:3 168:10
278:19 279:18	discovered	308:19	documented
293:9,11 302:9	287:20	diversify	138:8 186:6
302:11,20,24	discretion	105:19 224:23	201:7
303:2,21,23	131:25 132:3	dives 260:18	documents
305:22,23	174:19,24	261:2,9,20,23	7:24 11:15,24
306:2 308:14	177:25 187:7	265:13,15	12:23 40:8,14
	187:13	266:9 270:25	40:15 41:7,10

[documents - donald]

Page 22

41:16,17,25	19:1 20:1 21:1	114:1 115:1	184:1 185:1
42:5,11,18	22:1 23:1 24:1	116:1 117:1	186:1 187:1
43:6,14 110:6	25:1 26:1 27:1	118:1 119:1	188:1 189:1
149:20,24	28:1 29:1 30:1	120:1 121:1	190:1 191:1
195:18 223:25	31:1 32:1 33:1	122:1 123:1	192:1 193:1
261:13 263:12	34:1 35:1 36:1	124:1 125:1	194:1 195:1
doing 52:6	37:1 38:1 39:1	126:1 127:1	196:1 197:1
87:24 108:3,4	39:15 40:1	128:1 129:1	198:1 199:1
108:10,14,19	41:1 42:1 43:1	130:1 131:1	200:1 201:1
108:24 109:2	44:1 45:1 46:1	132:1 133:1	202:1 203:1
117:22 127:12	47:1 48:1 49:1	134:1 135:1	204:1 205:1
129:7,8,19	50:1 51:1 52:1	136:1 137:1	206:1 207:1
135:3 139:12	53:1 54:1 55:1	138:1 139:1	208:1 209:1
139:12 144:25	56:1 57:1 58:1	140:1 141:1	210:1 211:1
208:13 212:14	59:1 60:1 61:1	142:1 143:1	212:1 213:1
217:11 227:17	62:1 63:1 64:1	144:1 145:1	214:1 215:1
262:23 273:20	65:1 66:1 67:1	146:1 147:1	216:1 217:1
284:9,14,14,15	68:1 69:1 70:1	148:1 149:1	218:1 219:1
287:5,6 302:13	71:1 72:1 73:1	150:1 151:1	220:1 221:1
303:9,14,16,16	74:1 75:1 76:1	152:1 153:1	222:1 223:1
305:17 306:16	77:1 78:1 79:1	154:1 155:1	224:1 225:1
306:17,18,19	80:1 81:1 82:1	156:1 157:1	226:1 227:1
309:19	83:1 84:1 85:1	158:1 159:1	228:1 229:1
dol 220:12	86:1 87:1 88:1	160:1 161:1	230:1 231:1
227:4	89:1 90:1 91:1	162:1 163:1	232:1 233:1
dollar 104:12	92:1 93:1 94:1	164:1 165:1	234:1 235:1
134:13	95:1 96:1 97:1	166:1 167:1	236:1 237:1
dollars 38:17	98:1 99:1	168:1 169:1	238:1 239:1
domestic	100:1 101:1	170:1 171:1	240:1 241:1
103:11 113:12	102:1 103:1	172:1 173:1	242:1 243:1
donald 1:17 4:4	104:1 105:1	174:1 175:1	244:1 245:1
6:1 7:1 8:1 9:1	106:1 107:1	176:1 177:1	246:1 247:1
10:1 11:1 12:1	108:1 109:1	178:1 179:1	248:1 249:1
13:1 14:1 15:1	110:1 111:1	180:1 181:1	250:1 251:1
16:1 17:1 18:1	112:1 113:1	182:1 183:1	252:1 253:1

[donald - elements]

Page 23

254:1 255:1	downside 65:13	duty 204:19	easiest 85:22
256:1 257:1	68:20 100:7	308:10	east 115:12
258:1 259:1	draft 14:3,23	dynamics	eastern 114:8
260:1 261:1	15:18 159:25	20:24 21:4	economic 75:5
262:1 263:1	161:19 172:9	22:10	75:6 188:2
264:1 265:1	172:18 184:6	e	edit 15:7
266:1 267:1	drafted 160:2	e 2:2,2 5:6	edited 15:8
268:1 269:1	drafting 173:9	17:17 115:2,2	educate 75:22
270:1 271:1	drafts 14:25	115:4 313:1,1	103:18
272:1 273:1	15:22 16:3,4	314:2 315:2	educated 52:5
274:1 275:1	17:11,13	eagar 43:25	75:11 302:17
276:1 277:1	draw 263:20	46:23 160:3,3	educating
278:1 279:1	dries 306:7	eagar's 261:18	74:22 75:5,6
280:1 281:1	driving 99:20	earlier 8:21	76:8
282:1 283:1	124:10 125:10	11:23 44:3	education
284:1 285:1	135:12 163:25	45:5 53:19	71:15 73:10
286:1 287:1	208:12 294:12	112:5 134:18	75:4 76:4
288:1 289:1	304:12	141:21 142:20	138:4 216:14
290:1 291:1	drop 119:5,13	143:11 145:5	216:19
292:1 293:1	dropped 54:3	163:8 174:11	effect 3:14 63:7
294:1 295:1	163:12	174:21 185:3	173:6 259:4
296:1 297:1	dropping	186:22 193:18	efforts 142:10
298:1 299:1	119:18 120:15	195:2 201:11	either 11:22
300:1 301:1	drove 138:2	202:10 205:5	18:11 20:8
302:1 303:1	due 131:2	212:5 220:11	30:19 60:6
304:1 305:1	155:11 257:21	231:7,7 239:22	158:3 168:10
306:1 307:1	259:2 265:4	243:18,24	196:15 222:11
308:1 309:1	duly 5:7 115:5	244:7 245:18	264:7 310:11
310:1 311:1,7	313:9	262:25 272:14	elect 286:17
311:16 314:5	duplicative	284:7,20 295:6	element 79:21
316:5 317:2,4	28:20	early 64:17	108:11 214:7
317:12	durables	133:5,12	250:21 278:9
door 64:5	105:22	earned 38:11	elements 73:18
downs 100:6	duties 136:12	easier 61:13	79:4,11 125:22

[elevate - evaluating]

Page 24

elevate 223:4	265:12 270:11	equities 102:5	151:12 153:3
else's 293:20	281:6,15,24	103:7,8 113:12	174:7 225:12
embedded	288:7 290:8	equity 39:6	established
144:4	292:12 299:3	72:6 101:20	139:3 147:11
emerging 103:8	306:20 307:4	102:19,23	237:8 245:23
employed 26:6	307:17 310:8	103:6,21 104:9	246:15
206:7 283:25	enhanced	255:9 258:11	establishing
employee 58:13	143:2 258:9	267:4,8,8	224:2
129:24 130:2	259:2	equivalent	estimation
employees	ensure 60:21	221:11,13,15	17:22
57:17,19,22	132:25	erisa 59:19,20	et 1:6,9 4:8,9
58:2,3,12	ensured 285:3	65:15 81:20,23	316:4,4 317:1
encompass	entail 208:3	81:23 103:17	317:1
123:10 252:19	enter 4:22	121:24 126:4	european 1:13
encouraged	entered 215:22	210:7 220:16	4:14 114:16
104:7	enterprises	220:19,24	311:10,13
ended 14:17	281:17,20	221:2 227:3,19	evaluate 65:16
30:14	entire 26:6	errata 312:1	65:20 110:8
endowments	61:18 86:18	316:11,13,16	123:6 127:6,7
143:3	147:25 152:22	escalations	127:19 164:14
ends 80:15	305:9	90:3	175:18 178:3
152:8 311:5	entirely 129:20	escaped 239:14	213:19 248:22
engaged 212:6	202:6	esq 2:5,10,11	265:24 303:22
engelman 2:10	entirety 8:3,6	esquire 316:1	evaluated
5:11,16 12:10	44:8 53:23	essential	52:20 128:5
12:19 39:12,23	55:2 56:23	221:19 265:25	156:16 176:8,9
50:5,13 69:7	57:10 191:8	essentially	178:10,17
69:11 114:8	entity 54:17	24:12 56:15	182:3,16 187:9
115:10 128:10	57:14 88:2	88:14 142:23	248:8 302:5,7
148:14,22,25	enumerate	150:10 254:24	evaluates
171:22 176:23	105:5	285:2 310:4	247:22
177:7,10	equal 98:10	essentials 218:2	evaluating
198:25 230:17	99:15	219:14	122:21 126:6,9
230:24 241:21	equation	establish	145:16 161:8
257:11 264:10	106:24	147:22 151:5	165:5 167:9

[evaluating - experience]

Page 25

212:25 213:20 225:13 276:18 280:18 297:25 evaluation 72:16 127:12 175:12 176:3 185:4,12 249:18 302:9 302:11 303:18 304:16 evaporated 56:5 evening 199:4 event 255:14 256:24 eventually 184:16 everybody 52:4 52:5 65:9,16 66:17 67:6 78:22 81:24 89:7 92:7 143:17 145:2 165:19 264:6 275:6 ex 279:25 exact 10:8 15:24 16:5,12 38:13 195:13 195:15 216:5 218:8 295:18 exactly 22:7 28:16 31:19 47:12 51:4 63:25 128:14	163:15 181:23 181:23 192:20 196:7 204:9 210:20 211:25 224:10 275:24 284:14 301:24 305:7 306:18 examination 5:11 examined 5:8 115:6 313:8 example 41:2 48:17 79:12 85:21 86:14 92:17 104:2 110:11,15 113:6,9 123:7 125:12 132:8 135:2 146:11 179:22 195:24 196:5,11,14 197:5,16 200:8 214:5 216:21 231:8,16 244:6 245:7 278:12 305:19 306:4 examples 197:14 237:25 239:23 exceeded 276:25 except 3:7 309:15 exchange 17:18	exchanged 15:22 17:21 exchanging 17:11 excited 275:6 exclusively 58:8 excuse 238:12 execution 105:16 executive 23:5 130:6,19 283:15 289:13 289:20 exercise 97:9 97:10 exhibit 29:3 39:13,14,17,18 40:3,20 171:24 241:23 257:14 264:12,16 265:14 266:8 270:13,14,19 282:2 288:9 290:10 291:11 292:14 299:5 307:19 314:4,7 314:9,11,14,16 314:18,20,22 314:24 315:4,7 315:10 exist 66:16 109:16 227:18 existed 81:22 116:17 227:18	existence 138:17,18 existing 56:2 60:5,9,12 72:16 162:14 213:8 exists 109:13 exit 297:21 expect 43:12,15 45:18 84:5 109:8 162:11 164:22 256:22 270:6 273:4 280:23 285:7 301:2,11 expectation 76:10 106:15 285:2 expectations 78:7 expense 65:12 68:21 71:25 269:18,24 expenses 140:18 266:3 expensive 28:22 89:8 experience 74:15 75:17 85:3 106:14 107:12 115:22 116:19 120:4 123:5 126:8,9 126:15 139:15 173:13,18
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[experienced - fia]

Page 26

experienced 135:17,24 expert 5:18 10:13,22 11:10 18:22 19:3,6 19:11,12,17,20 19:24 20:7 21:14 22:11,19 25:17 29:7,12 31:7 33:8 36:16 38:12,19 39:15 168:25 290:5 314:5 expertise 143:6 experts 10:19 10:19,25 11:5 expires 312:25 explain 20:4 54:13 55:10 85:17 245:6 299:12 explanation 22:6 explanations 84:18,20 explanatory 74:24 explicit 220:15 221:2 exposure 101:20 102:4 102:19,23 103:11,21 104:9 258:11 267:8,9,9	expressed 265:3 extended 189:13 190:6 280:6 extent 7:15 95:2 138:11 284:7 extra 30:16,20 extreme 104:11 extremely 183:12 f f 21:21 115:2 313:1 fabulous 98:3 fact 25:22 38:8 50:16 77:15 79:8 81:23 101:11 116:17 142:8 145:8 164:14 168:4 169:25 170:3,6 170:18 189:25 200:2,9 203:17 208:6 213:21 215:7 226:3,20 226:21 244:6 253:18 257:3 262:13 264:8 277:25 280:2 factor 101:17 101:25 116:15 280:17	factors 97:14 98:14 99:9,16 99:19,24 104:22,24 106:3 107:6 176:11 188:5 188:13 189:22 244:13 facts 125:25 fail 81:11,11 162:21,24 236:4 239:15 239:19 failed 147:11 147:22 151:5 151:12 153:3 208:18 276:11 276:24 277:4 fails 178:9 179:3,19 180:4 182:2,14 185:13 316:18 failure 79:3 178:10,17 182:3,16 276:12 fair 6:22,23 22:6 41:6 44:10 47:3 95:20,21 118:22 fairly 89:20 173:16 200:3 205:7	fall 26:17 familiar 66:23 75:3 85:16 260:17 290:16 fan 145:24 fancy 75:15 far 116:19 122:2 133:10 195:3 306:8 fargo 32:4,9 fargo's 32:2 fashion 16:2 faulting 192:6 favor 84:16 february 200:11 201:19 244:23,24 fed 14:15 262:5 federal 2:8 fee 28:3,13 284:19 293:14 feel 60:17 136:11 137:13 137:15 283:18 feeling 136:22 fees 21:4,5 27:21,25 266:3 271:19 272:20 273:17 308:11 309:9,14,17 felt 30:9 46:17 52:16 194:24 fewer 100:5 fia 231:10
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[fiam - five]

Page 27

fiam 231:14,21 232:4	53:11 54:8 55:9 61:25	financial 139:19	144:17
fiction 18:5	65:22 75:4	find 43:3 48:10	first 5:7 6:10
fidelity 90:13	99:7 136:12	79:10 81:5	10:10 15:17
96:16,19,19,21	138:3,23	99:14 105:19	19:13 20:5
152:7 179:9,12	149:10 166:21	163:13 165:16	40:6,10 42:4
180:14 181:2	167:8 168:17	187:19 259:20	60:3 62:17
231:10,14	169:2,9 211:5	262:15	63:10 64:4,7,8
254:13,16,25	214:22,25	finding 233:10	92:3 103:15
255:14,19	215:3 216:14	262:23	116:8 117:2
256:12,16	216:19 217:4,8	finds 111:6	120:11 121:20
257:20 258:2	217:25 219:4	fine 5:14 6:18	122:5 130:13
262:10 265:2	219:13 283:20	39:21 56:14	149:25 153:9
267:11,20	284:3 285:6	98:24 183:19	154:18,21
268:16 271:15	286:22 290:24	183:21 191:17	177:18 183:16
271:25 273:5	297:10 307:11	192:2 193:20	195:11 210:25
279:9 285:15	308:10	194:6 221:21	222:10 247:11
286:4,17	fiduciary's	251:17	259:12 260:15
287:14 289:6	188:6,11	finish 81:4 87:4	262:20 270:22
290:3 292:8	fifth 168:4	97:22 211:16	282:8 288:14
294:5	186:8,14,20	fire 120:22,23	305:8
fiduciaries	figure 83:11	firm 21:8 23:5	fit 68:11 78:17
174:6 187:24	87:25 150:13	25:4,24,24	287:8
188:16,21	figured 86:24	31:19 32:5	fits 88:16
207:21 265:20	filed 307:14,20	33:21 54:7	five 20:8 51:5
265:24	307:25 308:2	82:4 84:14	86:16 87:22
fiduciary 21:11	315:11	93:14 130:16	93:6 94:6,16
22:4,15 23:2,7	filig 3:4	133:6 142:2	94:18 108:20
23:16 24:14,17	filling 14:17,21	143:5 144:12	109:13 110:12
28:6,11,14	filtering 192:8	282:24 286:23	115:21 116:5
32:11,13,18,19	finalized 15:23	287:4	116:10,23
34:6,11 35:25	16:16 295:22	firm's 287:9	117:11,13
36:9 37:11,16	finance 138:20	firms 25:22	118:8,15 119:7
45:16 49:11,18	138:21	31:18 33:14,25	120:6 121:8,8
50:17 51:16		91:6 92:10,21	122:2,10 123:7
			124:23 128:2

[five - freedom]

Page 28

176:25 183:5 185:7,21 200:24 201:13 243:15 244:11 247:23,24 248:5,8,10,23 249:8,10 250:4 251:21 268:12 268:23 269:14 277:3,15 279:3 293:10,10 294:13 300:4 300:16,20,24 301:20 306:20 fixed 103:6 flaw 203:7 flawed 32:20 flexibility 111:13 203:20 flodin 21:21 florida 6:2 85:25 flows 71:22 fluctuating 279:17 fluctuations 114:5 fly 12:6,20 focus 101:19 102:9 109:22 110:4,11 147:20 149:14 151:21,23,23 152:24 165:3	focused 47:15 143:3 149:5 185:10 focuses 148:3 focusing 25:9 152:16 folks 104:4 139:15 283:10 follow 82:6 122:6 140:14 174:22 246:17 247:4 followed 163:14 following 181:15 182:8 224:3 282:22 follows 5:8 115:7 footnote 47:13 47:14 243:2 footnoted 47:4 footnotes 48:25 force 3:13 foregoing 313:9 317:5 form 3:7 74:14 74:20 122:15 128:7 139:22 155:20 157:18 163:21 166:24 180:12 212:10 228:2 251:14 282:3 288:10 290:11 292:15	313:13 314:21 314:23,25 315:5 formal 211:8 211:14,23 212:8,25 213:23 216:14 216:18 218:12 218:14,19 227:24 228:4 228:22 formats 144:5 formatted 144:20 formed 78:10 forming 35:24 40:16 42:18 242:21 forth 14:9,13 14:24 15:5,9 17:21 29:7 41:15 65:14 89:13 92:4 106:10 137:18 145:2 223:24 224:8,10 forward 113:23 149:17 155:22 156:2 157:14 157:20 158:5,7 166:11,22 167:2 199:12 199:15 244:18 245:3,5 246:4 246:19	foul 24:7 found 38:2,2,9 213:21 260:8 foundations 143:3 founded 22:2 53:16 81:23 founding 49:9 54:5 four 9:12 16:2 19:3 20:8 42:8 57:9 63:23 87:21 134:6 168:3 186:5 189:18 190:7 200:17 201:4 225:16 254:17 293:9 fourth 167:25 169:5,11,14 200:15 201:18 270:12,16 framework 14:16 15:18 frankly 138:9 199:5 fraught 255:19 freedom 96:16 96:18,21 97:2 97:4 147:18 152:4,7,14 153:8,21 154:5 155:4 156:16 159:23 160:21 161:8 165:6
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[freedom - funds]

Page 29

166:17,19	frontier 103:9	170:12,17	88:22,25 90:13
167:12,18,22	froze 68:24,25	178:9,24 179:3	92:15 95:22
168:13,20	frozen 55:25	179:19 180:4	96:10,16,18,21
171:6 179:9	178:12 182:5	180:15 181:7	96:21 97:3,4
185:6,19	fulfill 290:24	181:16,25	97:12,18
200:10,16,22	fulfilled 136:12	182:14 183:24	108:13,15,19
202:2,7,12,22	136:18 141:5	185:13,15	108:20,21
203:2 206:21	fulfilling 60:21	187:9 202:24	114:4 123:8
232:4 234:6	283:20 284:2	205:3 207:13	124:7,9 128:19
243:14 254:13	285:5 286:22	207:13 229:21	128:21 147:18
254:16,25	full 100:9 191:7	234:5,5 235:12	152:4,7,8,14
255:24 256:12	213:9	240:18 242:16	153:8,21 154:5
256:16 257:20	fund 28:20,22	252:15 253:3	154:7,10,16
258:2 259:10	28:25 65:10	257:22 264:23	155:4 156:8,16
262:11 265:2,5	72:22 73:20	267:4 271:14	159:8,23
266:23 267:5,7	77:6,15,21	294:6 296:18	160:10,21
267:11,20,24	78:3,5,8 82:9	297:2 298:2,17	161:9 162:20
268:16 271:15	82:12 85:4,5	298:20,23	164:21 165:6
271:25 273:6	86:9 91:13	299:6,15,17	166:17,19
276:12,24	93:18 95:13	302:6,8,11	167:3,5,12,18
277:4 279:9	98:2 99:22	306:12,15	167:22 168:7
285:15 286:4	101:3 108:3,17	308:20,21,22	168:13,20
286:18 287:14	112:7 113:19	315:9	170:4,4,5,7,15
289:6 290:3	115:19 116:13	funds 27:16	171:6 179:8,9
292:8 294:6	116:22 121:7	28:20 29:2	180:25 181:5
freezing 148:15	121:11 122:9	30:6,11,13,17	185:6,19
frequently	122:12,23,23	30:18,22 32:2	200:10,16,22
239:12	123:9 124:5,22	32:9 34:5,8,9	202:2,7,12,14
freshly 11:17	125:5 126:10	34:13 35:7,10	202:22 203:3
friday 4:12	127:18 128:17	35:14,15,17,19	205:16 206:21
311:8	129:8 132:12	36:2,10 37:6	207:20 231:10
front 29:5	132:12 141:22	37:13 65:12	231:14 232:4,4
171:10 205:4,5	142:5,5,6	69:21 70:10,18	234:6 240:7
238:23 271:6	154:24 156:25	71:2,7 73:5	243:6,14
302:17	164:5,9 169:17	76:22 77:7	248:14 254:13

[funds - go]

Page 30

254:16,25	310:9 313:20	172:21 276:25	glide 70:14,15
255:6,24	future 133:9	generated	70:19 71:24
256:12,16	280:10	27:25	100:22 102:13
257:20 258:3	g	generating	102:14 103:5
259:10 262:11	g 281:21	272:24 273:6	103:14 255:5
262:12 265:3,5	gaining 255:18	getting 31:17	258:19 259:3
265:21 266:8	game 213:13	80:3 103:14	266:4,15,16,21
266:21,23	gather 66:16	105:21 159:14	266:23 267:2
267:5,6,7,11,20	265:24	160:7,8,14,24	267:11,15,16
267:24 268:16	gears 115:18	162:7,8 163:6	271:17,18
269:6 270:2	gee 306:15	215:15 233:12	272:20
271:15,25	general 20:23	233:18 251:6	global 33:21
272:12 273:6	21:4 22:6,10	275:12 293:13	go 6:8 12:7,10
276:13,24	73:10 80:6	give 15:6 16:4	14:9,12 15:6
277:4 279:9,17	82:21,25 96:3	20:15 79:12	16:5 25:20
279:25 285:16	97:7 145:14,21	84:24 104:2	26:3 30:12,21
286:4,18	145:22 164:17	122:16 129:4	35:19 39:19
287:15,19	174:15 191:17	146:10 157:5	41:20 42:5,23
288:4 289:7,9	191:19 192:13	187:19 192:23	44:25 46:3,18
290:3 292:8,8	192:15 194:23	197:10 293:3	48:15,23 50:6
292:9 294:6,20	194:24 197:21	given 61:8 90:9	56:11 59:23
296:14 297:6	203:10	124:3 132:5	64:24 69:2
297:11,15	generalized	190:25 201:25	73:21 76:16
298:13 300:2	189:9 192:18	202:21 212:8	77:9 78:11
300:23,25	generally 67:4	219:18 226:20	79:9,22 82:24
301:11,24	74:3 80:5	226:21 317:9	83:3 84:7
302:3,24 303:9	95:19 114:3	gives 205:2	85:23 86:6,7
303:17,22	139:14 140:2	giving 31:20	88:4 92:5 94:5
304:18 305:19	141:3 143:11	glaring 200:8	94:25 100:9
305:20,21	144:15 146:17	glass 281:21	103:13 104:18
306:6	173:12 189:12	glassbridge	104:20 107:13
funky 178:7	189:16 190:9	281:17,20,25	110:14,17
further 3:6,10	228:5 305:17	282:3,10 288:8	113:22 114:12
4:24 72:16	generate	288:10 314:21	115:25 116:22
115:6 149:22	100:12 113:22	314:23	117:15 119:4,8

[go - grammatical]

Page 31

121:12,14,20	300:14 303:13	95:16 97:23,24	204:3 207:19
124:6 125:15	306:5 308:18	98:6,6,8,16,24	211:8,12,13
125:19 127:6,7	goal 87:15	98:24 99:25	219:15 222:8
135:18 138:5	goes 16:2,3	100:3,11,12,14	222:12,16
138:16 139:6,9	43:8 47:17	100:16,17,17	223:20 224:11
141:20 144:9	84:22 94:13	101:8,16,18,21	227:15 230:15
144:15 148:14	100:13 109:9	101:22,24	232:18,19
156:10 157:3	143:17 148:4	103:10,11	259:14,20
158:15 160:23	149:22,25	104:4,5 105:8	260:15 275:20
160:25 173:21	168:24 179:15	105:13 106:6	288:3 294:23
177:14 178:7	181:18 199:15	107:7,10,13,14	295:17 298:2
178:16 183:22	201:21 206:6	110:7,14	301:18 302:5,6
185:3 186:19	231:20 276:21	111:16,23	304:17 311:10
186:21 196:23	280:6 308:3	112:5,24 113:7	gong 12:8
196:24,25	going 6:6,21	113:8,10,22	good 4:2 5:12
203:11 208:6,7	17:18 20:5	115:18 117:2,6	5:15 6:16
209:2,4 210:20	25:25 31:15,19	118:2,7,19	11:19 18:5
211:20,21	33:5 46:9	119:5,8,9,10,13	42:10 52:7
212:8 213:5,18	55:19 59:6,23	119:16,17	64:22 76:5
214:2 221:25	62:20 64:20,25	120:12,16,20	81:7 86:17
222:7 223:4	65:9,10 66:7	121:2 122:2,19	87:19 101:23
231:5,18,24	67:22 70:14,14	123:12,13,15	105:16 137:14
235:9,12,15,24	70:16 72:10	123:21,22	163:14 164:5,6
240:9,20	75:7,8,9 78:6,8	124:2,4,6,16	204:21 210:2
245:16 249:9	78:15 79:20	125:9,13	212:7 216:21
249:14 251:18	80:24 81:3,11	129:15,17	230:15 233:19
259:11 260:2	82:16,17 83:11	133:7 136:10	270:8 273:19
260:15 262:15	83:13,14,15,15	137:22,23	274:11 302:17
267:10 270:14	83:17 84:8,10	138:3 140:16	303:10 305:17
271:5 272:23	86:6,9,11,12	146:8 157:5,7	gotcha 213:13
276:7 277:7,22	87:4,8,10,18,19	158:17 161:21	gotten 83:22
282:5,16	88:3 89:24	172:4 184:18	grammatical
288:18,25	90:2,4,5,17,18	186:19 190:2	180:9 246:9,12
292:5,12,24	90:20 91:23,25	195:8,9,16	246:20
293:5,25	92:19 94:2	199:9 201:24	

[grandmother - hear]

Page 32

grandmother 95:8,10 graph 100:2 graphs 275:7 great 84:9 100:13 110:3 163:24 280:2,3 greater 25:4 grindstaff 46:14 grounding 72:13 grounds 189:4 190:10 group 20:19 31:5 36:15 75:12 93:25 107:18 109:7 113:4,20 120:8 121:3 123:24 176:5,10 183:19 205:16 205:22,25 206:4 227:13 241:13 278:4,7 282:19 288:19 288:24 291:24 293:2 groups 28:25 112:18 144:22 156:25 176:16 210:5 247:14 248:9,11,24 249:23	grow 90:20 growth 94:18 268:16 guard 90:14 96:9 guess 16:9 18:3 18:19 41:23 46:19 47:18 60:14 64:11 65:23 67:9 83:20 145:17 146:22 149:14 152:16 153:15 155:8 160:3 161:11 180:20 204:13 236:12 236:20 242:10 284:23 285:3 302:18 308:18 guessing 134:5 guesstimate 62:20 guide 258:9 guideline 174:12 225:5 guidelines 174:6 175:20 224:19 guidepost 174:15 guiding 111:13 111:14 guy 24:8 guys 294:20	h h 285:10,17,17 285:20 288:25 293:5,25 294:2 314:2 315:2 half 6:17 38:17 75:18 133:22 134:13 196:21 212:2,4 halfway 136:8 hammered 100:14 hand 44:14 59:10 313:22 handed 295:20 297:20 298:7 304:24 handful 79:18 97:12 handing 305:4 handled 140:12 222:15 happen 84:11 86:13 113:3 116:5 119:2 140:7 142:21 193:7 207:14 208:8 happened 59:5 152:9 159:17 163:13 204:9 226:24 232:5 235:2 255:2 297:19 305:6	happening 80:15 124:8 happens 86:25 92:23 195:6 221:21 223:3 226:11 happy 6:11 87:20 132:25 158:20 160:25 165:20 199:6 hard 39:19,24 75:17 106:7 118:9 168:7 189:19 harder 106:12 harm 24:7,20 24:21 harmon 27:2 hazy 97:6 head 8:23,24 9:2 11:7 12:3 31:13 33:14 41:18 49:14 71:4 72:11 184:11,19 231:9 255:13 279:14 298:14 heading 246:13 246:17,25 headline 259:24 healthcare 29:20 hear 50:4 71:8 82:2
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[heard - ignored]

Page 33

heard 5:21 281:23	62:17 93:24 94:8,14,18	hope 121:18 256:23 272:25	i
hearing 50:5	96:22 220:8	hopefully 249:21 281:7	idea 18:2 81:2 98:18 125:4 155:8 163:13 213:3 217:18 219:24 272:15 272:16 304:19
heart 127:4	267:21 305:11	hot 259:23	identification 39:14 171:24 241:23 257:14 264:12 265:14 270:19 282:2 288:9 290:10 292:14 299:5 307:19 314:4,7 314:9,11,14,16 314:18,20,22 314:24 315:4,7 315:10
heartburn 32:25	305:13,13 309:11	hour 6:16,17 199:4 213:14 230:15	identified 154:4 161:6 194:17 251:20 286:13
heavily 304:15	highest 93:4 95:23,24 96:3 96:4	hours 9:13 16:20 17:3,4,5 18:13,13	identifies 276:17
heavy 105:21 105:22	highlighted 248:3 290:4	house 2:16 21:7 21:7 120:22 141:2 143:25	identify 153:18 158:11 173:18 198:2 222:3 228:10 232:23 233:24 234:9
heck 104:14 105:23	hired 139:7 209:7	howard 2:15 4:14	identifying 256:4
hegemony 239:15	historical 266:2	hr 9:2 138:19 138:20 139:15 140:24	ignore 117:10
heightened 84:2 206:25 207:4,6,23 208:2,4 296:25	history 95:5,5 170:5,6,16 257:22	huge 145:24	ignored 243:15
held 201:18 207:13,14	hold 68:23 224:25 245:17 266:25 270:15 280:10 285:25 292:3	hundred 56:7,9 163:11 189:25 298:10	
help 99:19 134:25 218:16 222:8 275:10	holding 49:21	hurricane 85:23,24 86:3	
helped 58:25	holds 207:7	hypothetical 115:17 117:4 119:3,11 121:6 121:13,14 126:19 127:22 128:23	
helpful 77:19 104:19 125:16	hole 125:15	hypotheticals 127:14	
helping 123:6 132:25	holland 290:9 290:11,13,19 290:23 291:6 291:10,24 292:15,19 299:14 314:25 315:5		
hereto 313:19 317:7	hone 171:4		
hi 50:14 115:11	honest 118:22		
hiccup 50:15			
hide 125:2			
hides 125:8			
high 54:19 55:6 55:7,18 56:4			

[imagine - industry]

Page 34

imagine 94:24 219:25	imprudence 23:6	includes 224:12	independently 151:18 164:15
immediately 46:3 86:14,17	imprudent 79:9 141:7	including 17:7 87:15 209:23 224:16 225:18	256:4
impact 75:10 120:17 187:25 255:24 257:5 259:21	145:22,24 146:2 229:11 297:7,11	inclusion 184:22	index 113:9 205:11,14 271:20 277:2 298:20,25 300:3,25 301:10,20,23 302:16,19 303:10,11,15 305:24,25 306:12,15,17
impacted 118:14	imprudently 263:22 286:21 286:24 291:7	income 38:19 38:22,23 39:5 80:11 103:6	indexes 113:18 113:22 176:4 176:16 247:14 247:22 249:23 276:17 306:2
implemented 234:20 237:7 237:13,17,23 239:20 243:21 245:21 246:13 246:20 247:7	inadequate 191:4,14,21,24	inconsistencies 203:22 204:22	indifference 240:16
important 70:4 75:20 77:14,22 78:2 79:19 100:25 101:5 106:20 107:20 107:22 108:18 111:24 223:16 256:6 280:17	inappropriate 145:15,18 248:22	inconsistency 239:24 243:25	individual 48:6 89:4 123:22 210:2 222:11 229:15,18
importantly 72:4 138:10	include 47:8,25 123:16 140:6 144:10,11 176:3 194:17 197:13,15 198:14 209:16 212:14,15 216:25 221:17 221:18 224:2 234:11 242:23 250:4 278:6	inconsistent 234:16 248:20 248:25 250:7 250:12 251:16 253:15 254:4	individualize 89:7
improve 186:19	included 41:17 184:9,23,25 196:5 199:18 201:14 211:7 212:17,19 213:8 214:20 219:15 244:22 303:2,2	incorporating 248:14	individuals 54:20 55:6,8 58:12 60:15 134:23 181:6 207:14 214:11 285:4
improved 206:9		incorrect 183:15	industry 11:8 64:21 67:6 71:11 75:13
improvement 186:12 187:3 201:5 206:16		increase 255:9 increased 258:10	
improving 281:2		incredibly 86:17 89:8	
		indefinite 180:21	
		independent 54:23 57:17,20 168:19	

[industry - investment]

Page 35

80:5 92:15	246:2 249:5	institutional	interpreting
101:21 143:12	251:5,7 253:24	49:25	224:3
189:17 190:8	261:7 262:18	instruction	interrupt 12:5
193:6 199:21	262:18 263:6	6:12	70:8 223:8
210:10 227:10	263:17,18,19	integrated	intex 298:23
228:6 265:5	263:23 264:6	284:16	introduce 29:3
271:16	265:11,25	integrity	invesco 308:19
inexpensive	270:5,8 272:9	308:21	invest 108:5,6
303:17	273:2,5 274:3	intentionally	306:5
infinite 278:10	274:10,12	278:13,13	invested 64:17
inform 128:4	275:8 286:13	interact 91:6	181:7
informal	287:12,13	283:10,11	investigate
214:18	288:5 294:9	interest 32:7,16	142:11
information	302:16	69:18 138:12	investment
15:5,7 38:6	informative	204:20 207:22	7:21,23 21:7
46:17,21 47:13	188:10	219:6,7,8	23:7 25:23
47:14,16,22,23	initial 130:13	262:22 264:3	27:23,24 33:21
47:25 66:9,11	initially 53:20	265:3	33:24,25 39:2
67:4 68:16	54:15	interested	41:3 43:13
71:6,21,23	inoperative	26:18 313:20	51:7,16,21
72:9 73:22	172:10	interesting	52:8,18,21
74:8,9 79:2	input 88:15	20:19 129:2	53:12 63:19
83:21 112:23	inputs 86:6	154:9 262:16	66:15 68:9,18
129:3 135:7,10	113:15	interject	74:10,18 81:7
160:7,9 162:8	inspect 159:22	230:25	93:21,25 95:17
162:9 163:3,24	instance 99:9	internal 21:9	105:2 109:2,20
164:4,4,20,21	101:10 116:16	95:13 238:24	109:20,23
166:12 169:3	154:21 234:8	239:3	110:5,9,10
171:14 183:20	instances 233:5	internally 93:7	111:7,9 114:3
209:10 214:22	233:8,24	105:18	115:19 132:7
215:15 221:23	234:10	international	135:6 138:20
233:18,19,19	instantaneous...	103:8 242:11	139:20 140:12
240:9,20 241:9	157:6	267:8 306:6	145:16,21
242:4 243:14	institution	internet 38:3	156:17,19,23
244:10 245:10	51:14	176:24	160:14 169:4

[investment - issue]

Page 36

174:7 175:8,17	24:12 27:22	153:25 154:11	239:13,25
175:19,23	28:18 39:6	157:4 159:7,11	240:4,16,23,24
177:15,19,21	45:24 64:14	159:15,25	241:19 243:25
178:2 180:18	65:17 75:8,22	160:2,6,15	244:9 245:23
182:20 185:24	106:17 132:4	161:13,19	246:15 247:12
186:3 187:8	147:13,16	162:4,4,15	247:19 248:9
188:3 194:10	151:7,14 153:4	164:17,23,24	248:16,18
200:21 201:3,8	167:16 188:7	166:2,6,13	249:9,11,13,14
208:15,24	194:5 201:20	171:23,23,25	249:15 250:8
209:16,19	217:5 222:18	172:23 173:2,9	250:12 251:16
210:16,19	232:23 233:5	173:13,23	251:19 252:13
214:21 216:12	239:11 255:3	174:2,5,12	252:25 254:5
216:13 219:4	256:6 266:5	175:3 176:8	276:17 278:2
220:9 223:7	271:22	177:11 178:6	314:8
224:3,15,19	invoices 16:23	179:23 180:16	ipss 121:16
225:9,13,18	involved 7:12	180:24 182:10	172:9,18
232:22 238:17	22:22,24,25	183:10,22	221:18
238:18 240:16	27:11 59:22	184:7,10,23,25	ira 39:3 101:15
240:24 251:19	135:11 136:7	185:8 186:12	irrelevant
251:22 252:4	207:11 210:13	187:3,12,15	157:16 158:3
252:11,14,19	298:3 304:16	189:11 199:13	irrespective
253:2 254:2	309:22,24	199:17,22	24:14 116:15
256:2 276:4	involvement	200:2 201:3,11	121:9 122:8,11
279:17 282:10	214:7	201:15 203:17	164:17 170:6
282:21 283:7	ips 43:13 63:18	204:12 208:8	issue 20:25
283:18,25	63:18 110:17	209:23 216:5	27:5,11,17,25
288:20 290:12	110:17,18,20	221:15,17,25	28:11 30:4,7
290:17,18,22	111:14,21,23	222:4,8 223:13	30:14 31:23
291:25 293:2	112:2 116:2	223:21 224:6	32:11 33:18
293:13 294:14	117:16,18,24	224:12 225:3	34:6 35:4,6,9
295:5,7 307:8	121:14,14,21	232:24 233:6	35:14 36:24
308:14,16,25	122:6,6,8	233:15 234:17	37:2,6,13
309:5	125:18,21,23	234:24 235:22	44:13,18 45:11
investments	149:7 153:13	236:10,13,18	111:22 120:21
21:6 23:19,21	153:14,15,23	237:8 238:6	120:24 124:5

[issue - knight]

Page 37

125:10 126:21	j	junior 135:15	keyword 65:23
140:25 141:2	jagged 100:17	k	kind 6:15 12:20
155:14 164:13	january 152:23	k 22:24 25:12	14:8,12 17:20
164:18,19,22	245:3,5 282:13	34:6 39:3	25:4,20 26:3
167:4 169:13	288:15 291:15	49:19 50:17	41:21 43:8,14
173:23 184:21	292:20	51:10 53:11	44:17 45:17
186:23 192:3	jcroberts 2:5	55:8 80:18	46:2 47:9 48:8
192:15 195:21	316:2	121:16 224:9	49:7 54:5
196:21 199:14	jeffrey 282:23	224:11 285:16	55:25 59:11
199:20 218:16	284:19	286:5 289:7	60:3 62:16
226:3 228:21	jennifer 21:19	292:8 294:6,20	68:3 74:24
246:9,11,12	21:20	295:13,15,16	76:4 86:21
259:17 262:21	jensen 46:13	296:11 304:24	87:2,5,20 88:7
272:11 310:5	job 44:16 45:6	keep 33:13	101:19 102:3
issues 20:9,13	100:7 139:12	52:12 55:22	124:13 125:3
21:11 22:7	139:12 178:3	95:13 99:4,6	125:11,15
25:25 27:19	303:10	99:23 101:7,12	126:5 127:4
28:8,13,14	john 2:5 9:11	101:14 103:3	135:8,12
45:17 78:13	9:15 13:24	111:12 157:10	155:14 160:13
125:2 138:23	316:1	171:9 204:3	170:22 178:14
140:3,4,6,8,12	joins 138:4	288:4	207:13 220:17
140:15,21	jp 96:5	keeper 28:5	220:20,22
148:15 165:4	judge 7:3 23:23	308:12 309:10	238:21 259:17
183:24 192:25	24:3	keeps 12:6	259:23 262:2
194:2 203:12	judgment	125:7	272:10,13,24
203:15,16	150:24 190:14	kept 57:14	274:18,19
216:24 218:21	204:21	162:15 305:15	284:6 297:21
242:16	july 16:12	keri 2:10 5:15	kip 48:17
italicized 248:4	jump 222:7	230:14	knew 133:7,9
iterations	223:10	keri.engelmann	141:14 213:24
234:23	june 11:22	2:10	284:4,7 287:25
iterative 14:6	15:20 56:23,24	key 49:20,21	knight 290:9,11
17:24 41:19	129:23 199:8	50:18 51:10	290:13,19,23
48:14 136:6	307:15,20	53:9 75:11	291:6,11,24
	308:2 315:11	137:25 190:10	292:15,19

[knight - legacy]

Page 38

299:14 314:25 315:5 knocked 23:22 knocks 98:3 know 6:11 10:18,25 11:5 11:7,13 16:22 16:22 17:4,16 18:6 19:2 29:14 33:5 37:23,23 38:13 38:22 39:17 41:14 43:8,16 47:12 48:9 52:11 58:17 61:8 62:5,8 63:17 65:23 67:7 68:9 69:24 72:8 82:2,22 84:9 84:12,19 95:18 96:19 103:7,20 105:20 107:8 114:10 116:4 117:2,5 118:23 119:10,12 120:23 125:9 128:13 137:18 138:18 144:21 145:9 148:16 150:9,15 152:17 153:8 153:24 158:24 160:10 163:4,7 165:24 167:15	171:11,12 179:7,10 184:9 188:23 195:11 196:7,9,16,20 196:22 204:8 204:23 205:15 205:21 206:14 207:20 211:25 212:12,17,24 213:4,6,10,11 214:15 215:4 215:10,19 218:2,4,22,24 219:5 220:4 222:8 229:3 236:2,20 238:5 238:10,12 239:5,6,6 242:25 244:20 246:5 247:8 250:24 251:3 253:23 259:4 260:14 262:9 272:16 279:12 279:24,25 280:7 281:17 284:6,11,11,15 284:16 286:24 287:6,7 288:2 288:2,6,13 290:15,17 291:8 294:16 294:16 295:2 299:8,20 303:13 305:5,6	306:8 307:22 309:20,21 knowing 280:9 knowledge 165:23 219:12 219:19 238:7 239:2,20 known 79:10 knows 280:10 kraft 20:22 21:2,13 25:19 l l 2:10 5:6 21:21 115:4 281:21 labor 92:6 209:11,18,21 210:12 227:20 lack 14:25 22:25 23:7 33:22 154:14 202:13 lagging 108:8 laid 52:4 laliberte 1:6 4:7 316:4 317:1 landing 12:7 language 111:18 174:21 180:16 181:20 203:17 253:12 large 24:25 33:20 62:10 92:23 94:6,18 94:19 103:12	134:3,17 138:24 139:25 207:7 largely 64:25 larger 93:8 largest 73:7 80:3 87:23 late 133:4 160:24 latest 264:15 latham 8:7 11:11 latham's 8:9 9:23,25 laundry 46:2 272:19 laurie 8:7,9 9:23,25 11:11 law 31:18,19 33:13 lawsuit 310:6 lead 72:15 259:13 leading 271:15 lease 97:25 leave 54:22 leaving 278:14 led 41:16 287:19 left 132:15,16 184:8 203:17 235:8,8 253:17 253:20 278:18 legacy 62:16
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[legal - look]

Page 39

legal 4:15,16 8:23 13:17,19 14:2 23:13 25:22 47:16 56:12 312:1 316:23	line 81:4 87:5 97:22 100:16 100:19 163:2 197:20 214:13 274:20 285:20 312:6	literally 81:19 86:23 210:10 litigation 40:8 40:14 42:2,4 149:23 195:17	longer 136:9 176:18 189:4 248:15,17 249:25
legs 6:17	lines 100:2,3 127:23	little 10:16 32:24 36:13 48:13 49:6,8 61:13 62:3 80:8,9 95:25 100:6 106:5,11 115:18 136:8 144:20 153:18 173:15 178:7 205:18 207:25 215:9 217:11 301:25 303:7 305:20,21,23	look 8:5,7 12:2 16:11 24:21 31:12,21 42:24 44:19 46:18 48:23,25 66:3 66:6 70:14,15 70:16 72:2,4,5 72:7,8 73:18 78:15 79:12,13 79:15,16,17 80:24 82:24 83:15,17 84:4 85:21 86:22 87:5,8 88:3,21 89:10,11,12,14 90:2 94:25 97:20 98:7,9 98:16,18 100:18 101:18 102:11 103:14 103:19 104:13 105:8,13,24,25 109:11,14 111:18,24 113:7,10 116:2 117:6,17 118:5 118:25 119:19 120:5,7,18,21 120:25 121:2,3 121:21 122:3,4 122:5,6,17
lens 204:5	lineup 122:13 171:7	lively 76:15 living 289:23	
level 45:24 86:18 88:21 92:2 123:15 126:25 127:2 145:8 163:18 207:23 208:2,4 210:13 214:6 220:9 223:5 267:21 280:13	list 19:2 29:6 41:24 46:2 79:20 82:21 83:3 93:2,2,3 93:19,22,23,23 93:24 96:22 115:23 116:5 116:13,22 118:3 177:16 181:11 182:20 182:23,24 183:12 185:24 186:24 188:7 188:24 205:2 205:20 208:10 227:16,20 240:16,25 251:19 272:19 305:12,13,14	llp 2:2 loaded 291:12 307:23 loading 172:2 292:16 located 1:17 4:17 location 4:5 long 5:24 41:4 45:25 85:6 88:20 91:9 92:11 106:8 107:13 170:18 187:14 197:19 221:23 309:5	
lewis 2:7			
liability 132:11			
liber 205:19			
liberty 36:15 36:22			
lies 132:2			
life 35:20			
lightening 100:18			
lights 98:3			
likelihood 80:25			
likely 87:10,17 99:4 118:6 306:21	listed 26:16 29:12,13,19 31:6 38:16 40:15,20 184:4 184:5 293:10 293:11 308:17		
limited 28:10 143:7 176:3			

[look - made]

Page 40

123:9,12,13,15	281:4 288:7	107:25 108:2,4	92:7 95:4,5
123:21 124:6	290:8 291:18	110:2 113:4,5	100:2 101:11
124:16,21	303:8,13	113:17 117:16	101:13 103:2
126:24 144:16	305:21 306:22	129:5,11	103:21,25
144:19 149:23	309:4	150:14 152:3	104:8 110:22
150:12 151:3	looked 7:22	152:21 159:4	110:24 122:17
152:13 153:12	8:18,20,22	163:18 164:16	130:17,17
154:19 156:11	10:17 42:12	170:20 175:8	132:11 136:24
157:3,22 158:8	44:9 46:11	184:21 185:9	136:25 140:6
158:17 159:9	63:9 65:24	188:22 189:22	140:14,23
160:22,25	94:10,11,13	204:5 207:10	145:9 149:12
163:17 164:20	103:25 126:22	210:5,6 238:22	195:6,14
164:22 165:8,9	144:16,17	248:17 257:8	197:22 198:18
165:12,20	149:20 152:19	266:18,22,23	217:3 218:20
166:9,10 167:7	152:20,20	267:2,4 274:2	220:14 221:3
168:7 170:23	156:3 184:15	274:12 275:5	221:17 274:10
177:14 184:12	184:17,24	279:4 280:3	274:11 309:19
184:14,15,16	197:10 201:11	285:22 305:10	lower 102:19
188:17,20,24	205:4,22,25	looks 150:6	309:14
196:2 198:19	232:9 238:18	172:6 208:5	loyalty 204:19
199:6 204:19	245:18 273:17	267:10,14,16	lunch 114:10
207:22 208:9	273:17,18	267:18,24	114:15 115:12
217:7 223:20	274:9,10	268:4,8,11,15	m
223:21 231:5	275:18,25	268:19 269:5,9	ma 2:9
233:11,17	299:16 309:13	269:13,17,18	made 24:10
235:12,24	looking 11:24	269:20 278:2	41:13 45:14
236:10 240:4	29:5,9 44:16	294:24 305:22	77:5 122:23
241:20 244:14	45:2 46:19,20	losing 255:19	141:18 151:18
249:13 251:12	53:15 71:19	259:21	164:6 169:6
252:6,8 257:10	72:12 73:19	lot 6:6 32:3	192:12,22,24
267:23 268:3,7	80:12 83:16	38:3 44:15,20	194:10 204:3
268:21 270:10	87:3 88:24,25	46:24 67:10,15	211:12 228:8,8
271:4 272:21	93:9,16,17	73:15 74:22	228:9,13,21,22
279:7,10,21	94:2 99:20	75:16,23 76:3	228:24 229:2,3
280:8,22,23,25	105:15 107:24	81:16,16 83:16	229:7,9 230:6

[made - matter]

Page 41

230:8 298:2 313:18 317:5 magazine's 23:21 magnitude 120:16,17 mail 17:17 main 28:21,21 296:8,11 maintain 130:10 maintaining 224:12 maintains 132:9 major 143:16 144:17 173:22 majority 56:13 80:10 93:21 144:17 197:12 207:8 229:20 276:24 make 12:11 28:19 32:17 42:17,25 48:24 48:25 51:16 61:13 64:18 70:17 73:14 79:23 81:17 83:24 85:10 88:12 89:6 91:25 93:17 101:9 103:4 105:17 106:22 109:21 117:25	119:23 125:23 125:24 127:9 127:19 130:11 138:6,10 139:10,11 146:4 154:20 157:14 158:2 171:15 172:17 184:14 190:3 199:22 211:21 222:23 223:2 227:12,12 229:24 237:21 270:15 277:13 293:18 makes 70:17,20 107:2,3 223:14 226:19 making 42:6 45:23 51:9 73:20 74:9,18 76:6 83:23 84:11,22 109:22 162:9 204:21 262:4 293:20 302:17 306:3 managed 28:2 131:3 301:24 302:13 303:22 306:13 308:12 management 33:21,25 manager 52:14 68:9,19 83:14	94:14,15,15 96:5,6,6,8,9,10 96:11 105:9 106:8,9 107:3 107:4,4,11,14 108:25 109:15 135:9 252:11 252:14,19 253:2,7 254:2 manager's 180:18 managers 33:24 68:19 93:3,6 94:2,6,7 94:17,19 95:14 95:25 96:4 108:24 271:20 271:21,21 managing 53:25 mandate 132:4 186:13 187:3 mandated 176:9 manner 209:18 march 254:11 290:4 marconi 21:20 maria 2:11 39:12 171:23 241:21 257:11 264:11 265:12 270:11,18 281:24 288:7 290:8 292:13	299:3 307:17 maria.decastro 2:11 mark 39:12,23 marked 39:22 market 88:22 100:6,8,8,9,10 100:13 176:15 247:14 249:22 255:20 marketplace 91:19 markets 103:9 103:9,11 markoff 143:22 married 21:22 mary 1:6 4:7 316:4 317:1 matched 167:7 materials 40:4 149:16,17 150:2 167:20 216:12,14 275:21 276:2 277:21 mathematical 88:8 mathematics 86:20 matter 4:7 5:17 5:19 10:2,15 10:23 98:22 104:6 127:17 145:14,21,22 164:17 222:18
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[matter - mid]

Page 42

261:22 262:19 278:12 306:14 309:23 mean 8:3 18:2 21:24 43:12 45:4 47:21 48:3,21 52:23 60:13 66:4 70:8 81:19 84:23,24 85:21 107:24 116:6 120:22 121:23 138:14 145:18 157:6 173:20 178:23 180:2 181:8 189:7 193:23 207:4,7 215:22 221:10 250:19 279:20 284:10 293:9 296:24 means 6:25 89:10 100:5 105:14 117:22 157:7 174:23 189:13 190:6 217:3 meant 126:13 231:22 measure 106:22 302:19 measured 176:14 247:13 249:21	measuring 128:17 meat 44:18,25 45:10 meatier 219:22 meaty 219:8 mechanism 123:20 media 311:5 median 87:5,8 89:14 90:25 125:14 240:8 240:18 241:8 241:13 251:20 meet 87:14 181:6 283:14 meeting 135:20 150:7 152:21 191:2,8,13,24 194:4,4 195:25 197:5,6,12 199:8,12 200:8 200:16,21 201:18 228:23 229:6,14 241:24 257:12 257:15 264:13 264:14,24 266:12 270:17 270:20 271:4 272:6 275:20 275:23 276:3,4 314:10,12,15 314:19	meetings 135:18 192:7 215:16 217:21 217:23 member 49:18 54:5 128:25 229:16 230:3 members 8:18 8:22 43:24 162:22 172:12 174:19 193:14 194:14 214:16 215:11 216:4 227:4 229:18 261:6 memory 146:9 152:12 158:18 160:24 199:7 mention 145:4 183:10,13,16 239:14 mentioned 9:22 25:11 53:18 76:9,20 77:2 77:20 85:13 93:18 97:19,19 101:4 107:17 112:5 138:13 154:3 160:19 166:2 169:5,11 172:9 220:11 menu 28:21 mercier 289:15 289:17	mess 33:5 171:2 met 141:10,12 146:17 metal 100:12 methodology 94:12 metric 66:3 106:12 111:5 121:9 122:12 188:10 190:18 299:24 metrics 64:13 64:16,18,21,24 65:2,21,24 66:19,22 67:2 67:18 68:2 69:13,16 70:11 71:13,16 74:17 75:6,14 76:9 76:10 77:22 106:7,11,16,22 107:17 109:4 109:24 121:4 121:17 122:18 144:4,5,6,7,13 164:15 188:4 190:21 251:10 251:12,15,17 metropolitan 308:20 mid 25:4 52:13 52:23 242:11 306:6
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[midatlantic - monitoring]

Page 43

midatlantic 316:15	195:25 199:5 211:19 221:3	miscommuni... 47:20	money 23:21 52:14 98:21,25
middle 201:24 249:19 265:23	281:7	misread 250:13	99:5,6 101:7
millersshah.com 2:5 316:2	minutes 12:8 44:21 97:19	misreading 188:14	101:12,14 207:19 275:16
million 38:17 62:14,14,23	114:9 127:5	missed 19:13 133:25 220:18	293:21
63:5 64:3 87:18,20	152:21 153:12	220:25	monitor 139:20 145:21 147:12
133:21 134:4 259:23	153:12 191:2,8 191:13,25	missing 197:23 198:13 222:3	151:6,13 153:4 153:23 175:16
mills 29:20	192:4 193:3,9 193:15,19	236:23 274:19 285:21	177:20 178:2 181:16 186:4
mimicking 303:10,11	194:7,16,20,23 195:9,12,14,18	misspeaking 196:14	186:25 200:10 200:17 201:4
mind 52:12 70:6 97:6	196:21,22,22 197:3,6,13	misspoke 231:7 244:5	201:21 202:8 202:12 203:3
99:23 103:3 111:12 148:22	198:4,6,13,15 199:2,8,12,18	misstates 157:18 166:24	203:10,11,12 203:14,21,23
155:7 165:18 194:22 218:15	199:23 200:9 201:17,22	misunderstan... 215:17	204:10,15 206:2,10,11
234:12 236:7	206:6 228:23 229:6,14	mix 59:24 72:6 90:10,11 153:9	217:4 222:18 239:13 241:10
mine 38:25 55:23 141:23	241:24 256:9 257:8,9,12,15	166:17,20	242:8 243:7,9 243:10 251:22
mineola 312:2	258:16 259:5 264:11,13,14	mixed 31:18	252:15 253:3 253:21 257:20
minimum 39:4	270:17,20 271:5 272:6,15	modified 200:2	258:8
minneapolis 282:25 283:13	273:24,25 275:21,23	molina 29:20	monitored 27:23 175:23
minor 207:12	276:5 306:21 314:10,13,15	moment 27:7 35:12 36:12	195:7
minute 172:3 192:16 193:21	314:19 minutia 88:13	37:4,9 54:6 67:2,24 70:6	monitoring 23:8 28:18
		78:23 79:21 143:23 205:6	34:7,12 36:2 51:11,20 53:7
		234:13 256:17 275:25 293:3,7	63:19 77:14

[monitoring - new]

Page 44

82:11 105:2 106:17 122:22 132:9 142:6 153:21 154:5 159:23 160:20 183:23 201:14 219:5 220:9 225:8,13 237:8 239:16 244:9 244:13 245:22 246:14 257:4 258:6,8,17,19 258:22 monte 80:19 82:16 85:13,19 86:8 112:20,22 month 23:22 26:20 150:10 150:17 152:15 152:17 244:20 monthly 16:23 months 5:25 6:2,2 64:7 morgan 2:7 96:5 morganlewis.... 2:10,11 morning 4:2 143:21 198:10 277:22 motivational 262:21 move 33:2 127:23 182:19	moved 97:3 moving 157:14 multiple 141:13 209:25 214:2 235:13 mutual 36:15 36:22 myriad 263:8 n n 2:2 5:6,6 21:21 115:2,2 115:2,4,4 name 4:14 5:15 21:19,22 24:24 35:18 37:24 38:4 95:22 143:23 160:3 283:2 287:9 312:4,5 named 81:7 313:8,12 names 8:16 11:6 20:13,15 20:17 34:2 35:21 58:17 narrow 24:21 91:23 natixis 31:16 33:6,7,20,22 34:4,5 36:22 nature 25:20 187:13 near 215:3 nearly 258:13	necessarily 17:7 38:14 44:15 63:15 67:12,15 73:23 109:24 121:19 124:3 129:12 135:25 145:23 169:2 179:11 188:10 190:3 208:25 212:16 229:17 236:17 238:25 249:12 299:21 necessary 51:12 52:16 70:24 191:23 225:23 317:6 necessitate 287:14 necessitated 287:16 need 6:10 63:15 63:16 75:22 76:12 84:4,7 84:21 101:8 103:18 104:7,8 104:15 110:20 127:5,7 129:6 129:8,11 135:7 139:10 157:8 166:20 170:24 178:16 206:2 218:16 223:3 236:9 272:24 306:19,21	needed 46:18 86:25 87:14 127:15 162:8 168:15 194:10 199:17 213:18 needs 83:2 109:19 117:21 126:21 157:8 178:17 181:6 199:22 221:24 230:5,7 280:17 negative 87:7 240:8,19 241:8 243:14 244:10 256:5 negotiated 309:14 neighbor 57:25 neighborhood 18:19 80:17 134:11 neither 217:12 net 54:19 55:6 55:7,18 56:5 269:23 never 76:4 141:10 145:9 145:11 160:6 172:16 183:22 183:25 194:22 206:18 210:21 255:22 281:23 283:12 new 1:19 55:24 149:7 160:2
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[new - offered]

Page 45

166:2 215:22 231:9 312:2 313:2,4,6 nfp 30:15 35:15 35:17 nice 275:7 night 75:16 nine 301:18 noise 303:8 304:11 306:10 noncompliance 161:23 noncompliant 232:24 233:6 normal 41:21 43:14 63:17 156:20 north 38:16 62:24 63:2,5 notary 1:18 5:7 312:25 313:6 317:13,19 note 199:16 271:25 293:18 316:10 noted 202:4,23 311:12 317:7 notes 95:13 306:22 notice 1:17 149:21 november 1:12 4:12 289:18 311:8 316:3	number 4:9 15:24 16:5 18:4,5 19:9 33:25 38:14 39:2 42:22 47:3 52:24 53:2 62:23 67:2 69:15 72:8 74:25 87:23 88:11 92:22 95:12 96:2 106:3 110:15 119:4,6 119:7,10,13,18 120:15,18 130:7 154:15 169:16 171:11 175:4 195:13 195:15 201:19 204:2 207:10 211:25 216:23 223:13 225:4 238:14 249:8 249:10 263:9 278:10 285:11 297:17 311:5 numbers 89:23 90:9 110:12 116:6 118:8 156:8 207:10 215:6 306:11	oath 3:13 5:2 6:25 objection 74:13 74:20 122:14 128:6 139:21 155:19 157:17 163:20 166:23 180:11 212:10 219:23 227:25 287:24 291:2 objections 3:7 objective 178:9 180:18 181:3 275:14 objectively 122:9 objectives 78:6 78:24 88:16 174:7,8 175:9 178:22,24 179:4,8,11,13 179:20,21 180:4,7,24 181:5 182:2,15 185:5,14,15,19 274:24 275:3 275:15 obligation 7:2 60:21 208:23 209:5 283:20 284:3 290:24 297:10 obligations 141:6 285:6 286:22	obligatory 174:17,18 obnoxious 12:6 observation 191:17,20 obtain 225:22 obviously 21:11 25:22 38:6 43:10 57:24 59:8 68:4 69:20 70:13,18 71:10 73:16 74:23 77:5 85:9 89:5 104:7 116:20 122:23 125:22 126:21 130:23 137:15 148:3 157:25 174:24 188:15 262:8 264:2 occasionally 283:12 occasions 218:7 occurred 202:5 202:25 ocio 27:7 offer 51:6 76:22 85:5 offered 52:24 72:22 74:11,19 77:6 106:17 149:9 286:5 289:10 292:7,9 294:6 296:15
	o		
	o 5:6,6 21:21 115:2,2,2,4,4		

[offered - opinion]

Page 46

296:18 297:14 297:16 298:17 offering 30:11 155:2 289:6 290:2 offers 285:15 offhand 193:25 office 94:9 283:13 officer 3:12 offices 4:17 141:13 officially 53:22 120:2 oh 170:23 307:23 oil 27:2,18 okay 12:4 14:21 18:21 31:22 33:15 34:10,19 40:9 42:21 43:17 47:18 48:11,17 56:22 80:24 82:5 87:16 89:3 93:16 94:5 97:21 101:23 105:4 110:23 111:23 113:25,25 114:2 116:11 119:7 120:11 120:20 127:10 127:11 131:13 142:3,24	145:10 146:23 147:8 155:22 159:6 164:9,11 164:13 166:18 174:3 175:11 179:17 180:2 181:22 182:22 183:19,21 185:23,25 187:22 188:25 189:2 190:24 195:19 197:8 199:15 200:4,6 203:25 204:22 215:25 216:10 224:7 225:6 228:10 229:8 232:20 237:5 237:16,19 239:10 240:5 240:14 241:6 241:25 242:14 243:12,24 244:8 245:14 245:19 246:23 247:10 249:13 249:17 250:14 257:18 258:2,3 260:13 265:18 266:16,18,25 269:4 271:9,9 271:12 275:20 276:9 280:10 281:9 282:7 285:21,24,25	288:11,14 289:4 291:19 291:21 292:3 292:16 293:3 294:2,4 299:14 300:7 301:8 307:16,24 308:15,23 310:12 old 89:20 210:8 312:2 onboard 54:18 onboarded 59:11 214:12 214:16 215:11 215:20 onboarding 59:7 214:19 215:7,15 218:18 once 59:10 97:10 186:3 ones 25:14 51:8 66:7 69:17 70:5 93:4 94:21 95:3,7,9 96:13 99:17 102:21,24 141:14 167:17 198:20 212:16 238:2 262:3 284:4 ongoing 27:20 31:25 36:5 43:21 61:16	62:2 71:15 73:11 open 34:18 172:25 241:25 271:9 291:13 292:17 opening 39:19 282:4 operate 34:2 125:20 227:23 228:7 operated 162:16 226:4 operating 51:24 54:16 162:14 263:22 operation 173:5 operational 83:16 94:9 105:14 operative 172:10,11,14 172:15,19 opine 28:6,14 173:24 208:17 270:22 opined 20:10 21:2 27:12 28:15,23,24 30:7 32:15 opining 22:3,15 260:6 opinion 11:4 14:11,11 23:9
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[opinion - page]

Page 47

31:7 32:10 33:8 34:11,21 35:24 36:8 37:11 40:11,16 41:8 42:19 45:6 145:13 149:15 150:10 150:22 152:8 155:3,6,15 156:14,22 157:15 158:2 158:24 159:21 166:18 167:3 167:20 168:12 169:9,19 171:5 190:25 191:12 191:15 199:11 204:14,17 208:22 237:12 242:21 248:21 251:14 260:21 opinions 78:10 opportunities 175:19 opportunity 156:6,9 157:22 173:8 oppose 28:12 opposed 30:11 46:4 47:15 98:12 99:11 100:18 108:21 112:3 125:2 163:19 164:16 165:17 192:9	219:6 246:10 262:4 274:18 opposite 163:16 option 111:7 120:3 156:17 177:19 178:2 178:12 186:3 options 51:7,9 51:17,21 52:19 52:21,24,25 53:7 74:11,19 105:3 145:16 145:21 156:19 175:24 177:21 182:5,23 224:16,20 225:9,14 266:2 308:14,16,25 309:2,5 order 41:8 49:8 93:14 123:10 230:3 ordering 5:9 organization 21:10 53:22 94:11 105:10 original 34:2 125:4 ought 109:25 118:13 120:13 120:24,25 211:7 257:7 outcome 87:10 126:3 260:6	304:19 313:21 outcomes 121:25 130:23 outliers 87:6 outperform 185:6,20 276:13 277:15 279:5 outperformed 128:3,18 outside 28:21 52:8 140:12 187:8 252:4 overall 30:14 51:13 105:10 123:15 154:23 217:15 255:20 258:10 overhaul 254:25 256:11 256:15 257:4 oversee 60:20 overseeing 139:10 oversight 99:7 overview 265:2 own 10:23 27:16 30:11,17 33:25 56:7,9 164:16 233:17 273:22,24 owned 54:12 55:17 56:6 owner 56:13	ownership 55:17 p p 2:2,2 p.m. 1:12 4:13 12:14,18 50:8 50:12 69:6 114:14,15 115:3,9 148:18 311:9,12 pa 2:4 packaging 131:16,19 295:8 296:5,14 307:7,9 packing 132:14 page 34:20 41:5,24 43:23 147:6 160:25 173:25 175:2,6 177:12,15,16 178:8,14,21 181:12,19,20 181:23,24 182:7,20,21 185:4 187:22 190:22 216:23 217:17 218:13 224:6 225:3,7 225:21 231:16 232:14,16,18 232:19 233:11 234:2 236:25 237:4,15 239:8 239:9 240:25
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[page - particular]

Page 48

241:2,4 242:9 242:10,10 245:15 247:5 249:15,17,19 252:9 257:25 258:2 264:21 264:22 266:13 266:24 267:5 267:10,14,15 267:18,23 268:3,7,11,15 268:20 269:2,2 269:5,9,13,17 271:10 277:7 282:6,16,22 285:19,23,25 288:14,18,21 288:22,22 289:2 291:18 291:21 292:3,5 292:24 294:3 300:14 308:18 310:13 312:6 314:3 315:3 pager 214:24 217:25 219:16 219:22 pages 40:6 41:4 42:5,8,13 144:9 224:25 232:19 233:10 268:19 269:18 paid 30:19 308:11 309:9	paper 219:10 219:17 para 140:17 paragraph 29:6,10 53:16 60:24 146:11 147:6,8 151:4 174:4 176:21 178:8 185:11 186:2 187:19 187:20,23 200:4 201:25 201:25 216:8 223:18,19,20 223:22 232:17 232:19 233:4 233:23,25 234:3,4 237:24 239:9 240:11 240:13 243:12 244:2 245:12 254:8 255:22 260:11,23 261:5,6 265:17 265:23 270:7 270:22 276:7 286:14 308:18 paragraphs 243:20 246:16 247:4 parallel 54:25 55:23,24 parlance 33:23 part 9:20 11:4 42:9 43:20	53:21 61:15 71:14 72:5 73:10 75:4 81:25 85:9 91:14 93:13 110:6,7 124:17 133:25 137:24 139:15 156:20 161:23 164:24 173:9,14,16 174:24 192:3 196:6 206:16 211:5 220:18 222:20 231:16 249:8 250:24 257:21 258:10 263:9 276:4 284:18 297:21 participant 87:12,13,13 89:3,6,17,18,19 89:21 90:5,25 90:25 224:22 272:23 participants 32:7 79:14,16 80:4,16 87:23 97:24 98:20 99:3 101:7 102:5 103:23 130:24 138:12 204:20 207:11 219:6 259:23 272:13,18,23 273:7,9 274:7	274:14,21 275:12 309:3 particular 8:8 13:22,24 14:10 28:8,17,25,25 32:23 35:9 43:19 46:22 48:5,5,6 50:20 52:17,19 61:22 61:25 73:19 77:11 78:9 79:3,4,25,25 81:8 82:22 84:15 87:11,13 90:11 93:14,17 105:21 107:3 108:25 113:20 121:13 126:22 135:8 137:2,10 146:7 154:21 154:25 158:12 168:20 169:3 183:11 184:19 191:16 194:7,7 194:19 196:17 197:9 198:22 214:6 223:9,11 226:22 228:11 234:7 257:8 259:9 260:6 264:4 272:12 280:9 284:18 287:8 293:17 293:22 294:13 294:23 300:10
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[particular - percentage]

Page 49

301:6 304:7 309:7 particularly 117:16 118:8 160:24 184:21 226:8,14 parties 3:4 82:4 partner 20:22 21:18,23,25 53:18,21,25 54:18 55:18 59:9 305:5 parts 44:20 158:12 174:17 174:17 187:15 pass 162:21 236:4 239:15 239:19 passed 97:18 227:19 passing 252:12 252:20 passive 96:7,8 96:9,10 271:22 302:6,11,12 303:9 305:16 305:20,24 306:12 passively 301:23 past 10:4,5 98:8 109:14 137:20 167:5 170:11 235:7	path 35:20 70:14,15,19 71:24 100:22 103:5,14 255:5 258:9,20 259:3 266:4,15,16,23 267:2,11,15,16 271:17,18 272:20 paths 102:13 102:14 266:21 pattern 116:17 189:25 262:13 264:9 pavilion 55:3 56:4 95:15,18 129:22,25 130:4,11,25 131:5,7 132:15 132:16,22,24 134:19 136:15 136:23 141:3 141:12,25 142:2,15,18 143:2 145:6 211:18 221:7 281:18 282:19 283:8,16 284:2 284:22 285:2,5 286:12,21 288:19,24 289:13,17 290:15,23 291:23 292:25 293:17 294:8	294:21 295:3 297:19 pavilion's 293:12 pay 140:18 paying 204:8 payroll 140:5 289:24 pdf 285:11 288:18,23 291:18,19 292:25 299:15 pedal 100:12 peer 107:18 109:7 112:18 113:4,20 120:8 121:3 123:24 144:22 156:25 176:5,10,16 183:18 205:16 205:22,25 206:3 210:5 240:8,18 241:8 241:13 247:14 248:9,11,24 249:23 251:20 278:4,7 peers 70:3 108:4,5,7,9,23 213:25 247:24 pending 6:13 pennsylvania 4:18 people 30:16 46:22 51:2	66:8,10 71:12 75:14,18 78:16 80:8,9 81:8,9 98:17,24 101:12,12,14 101:17 109:25 110:25 130:12 135:3,4,19,23 135:25 136:2 136:20,21 138:15,16,18 138:21,21 139:13 140:19 207:16,18 209:25 214:25 216:6 218:16 253:17 255:7 274:17 275:15 283:14 284:5,8 287:2 288:3 294:24 305:10 percent 23:25 24:2 55:17 56:6,7,9 80:7 80:10,18 87:15 89:17,25 90:6 90:7 101:22,23 102:4 126:11 126:19 128:3 128:18,22 129:7 255:10 258:11,12 298:10 percentage 80:3,11 207:7
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[percentage - pick]

Page 50

207:8 267:19 280:21 perfect 125:21 perfectly 192:2 perform 123:3 performance 24:5 53:7 67:18 68:5,5 108:11 109:6,6 112:13,14,17 114:6 120:6,7 122:22 123:6 123:10,17,25 124:20,21 126:7,10,25,25 139:20 144:24 144:25 154:15 161:12 163:18 169:25 170:16 175:12,17 176:2,8,9,14 179:23 183:5 183:10,13,16 183:17,24 185:4,12 188:3 201:12 202:14 203:4 204:16 205:22,25 206:3,9 225:8 242:16 247:12 247:22 248:8 248:10,15,23 249:18,21 251:20 257:22 276:19 277:16	278:2 279:7,11 279:13,17 281:2 286:13 294:9 299:17 304:3,6 performed 24:12 279:25 period 19:10 25:10 56:23 57:11 59:4 61:4,7 73:5 81:18 86:19 96:25 97:6,25 100:15 109:5 116:5,10 123:8 128:2 129:20 134:22 146:5,5 146:18,19,22 146:23 147:23 147:25 148:6,7 148:9 149:4,13 149:22 151:2,8 151:20,21,24 155:6,14,23,25 156:3 157:16 157:21 158:5 161:22,25 168:20 170:18 171:7 185:7 189:13 190:6 199:6 200:24 201:14 204:24 205:17 206:17 210:10 214:13 214:17 215:12	215:20 217:16 227:11 232:8 238:3 243:15 244:7,11,17 245:3,4 246:3 246:18 247:6 247:16,23 248:5,17 249:25 250:5 255:16,19 258:17 276:23 277:19 278:21 279:3,12 280:6 281:3 282:13 286:18 289:5 289:16,25 290:2 291:14 292:21 296:3 298:7 299:18 301:17 305:2 308:3,4 309:16 313:19 periodic 73:22 periodically 69:23 71:6,11 211:8 periods 114:5 159:18 176:18 176:18 189:4 235:13 247:24 249:25 258:23 258:25 279:18 permitted 240:7,18	permutations 86:11,21 persistent 276:12 person 11:16 23:20 44:17 58:7 75:2 86:19 90:24 140:24,25 142:8 215:22 220:4 253:20 253:20 personal 137:5 personally 40:19 44:6 47:7,24 58:14 58:21 116:21 130:9 133:13 136:12 295:24 perspective 91:25 149:10 philadelphia 2:4 4:17 philosophies 78:24 philosophy 78:9 137:6 271:17 phone 17:13,15 17:18,24 18:14 pick 26:12 48:16 101:3 138:19 139:2 159:13
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[picked - point]

Page 51

picked 54:15	53:17 54:24	257:5 261:15	plausible
picking 141:21	55:19 56:3	265:20 273:7	205:24
picture 100:3	57:4,16,23	273:13,15,22	play 79:22
piece 92:12	59:16 60:4	274:4,14,20,24	81:20 82:10
219:17	73:8,19,22	275:11,14	106:4,23 107:6
pieces 221:16	74:11,19 76:25	282:10 285:15	played 295:3
place 52:20	78:15,17 79:5	286:5,16 287:7	please 5:3 6:11
92:3 106:9	79:7,8 80:2,12	287:15,22	39:13 128:8
109:16 146:8	80:19 81:8,11	289:6,10 290:2	187:21 236:10
149:6 153:9,23	81:14,24 82:13	290:23 292:7	257:13 264:11
154:18 177:19	83:12 88:16	292:10,19	307:18
177:25 196:18	89:10 90:3	293:21,23	pleased 271:24
221:7 234:24	99:5,6 101:7	294:6,23,25	plug 89:2,22,22
238:3 242:8	101:13,14	296:8,11,22	plus 104:12
262:20 288:4	103:25 104:13	297:14,18	point 8:7 14:15
298:5 313:12	104:14,17	302:4 309:2,10	18:20 21:8
placed 116:13	106:17 110:6,7	plan's 174:7	22:8 25:3
243:6,9,10	122:13 131:11	175:17,23	27:20 32:23
246:10	131:17,18,20	185:15,18	38:24 47:11
placement	132:8,8 133:19	206:25 216:13	52:23 53:8
115:22	136:14 138:17	232:22,24	54:4,4 56:2,10
places 249:4	139:11,13	256:2,5 274:24	58:20 59:8
placing 181:16	140:4,18,21,25	275:3,4 291:24	62:4,21 83:4
251:22	156:20 158:10	planned 85:5	83:20,21 88:25
plaintiff 31:7	167:4,5,13	plans 22:22	95:6 96:24
34:21 36:16	168:9 171:7	55:8 61:22	97:4 98:15,17
plaintiffs 1:7	174:5 179:14	63:23 78:22,25	101:20 111:22
2:3 4:8 10:19	180:25 185:5	79:18 82:24	117:6 118:17
10:21 17:12	188:2,3 189:10	101:10 121:16	118:21 119:11
22:11 26:19,25	204:19 206:21	134:4 140:7	119:15 120:9
29:23,24 31:9	207:9,21	143:4 263:13	120:23 121:3
32:5 33:8,10	221:20 223:25	273:10,24	121:25 123:19
34:24 36:18	224:16 225:18	platforms	127:13 133:8
plan 23:4,25	232:25 233:7	66:16	134:5 135:3
49:9,19 51:10	239:11 255:25		149:8,12

[point - printing]

Page 52

150:13 162:17 163:8,9 166:16 167:2,18 168:3 168:5,24 170:9 170:19 171:20 184:19 186:25 189:24 196:18 202:25 203:9 203:18 204:6 204:12 218:14 219:10 223:12 223:16 224:15 225:16 236:5 241:6,11,14 243:2,4 244:8 247:11 248:7 258:20 259:2 262:24 263:15 264:25 265:16 271:18 274:12 284:24 288:5 295:21 301:6,9 301:10 309:7 pointed 214:25 217:17 points 163:11 190:2 218:24 218:25 220:2,6 220:8 policy 7:21 109:20,21,23 110:5,9,10 111:9 223:7 224:3	pool 138:25 poor 204:16 populate 15:3 portfolio 306:13 portion 14:3 69:10 128:15 148:24 177:9 position 24:11 24:18 218:11 positive 87:7 possible 11:23 86:3,10 88:9 112:25 113:2 117:15 121:17 127:11 128:24 197:18 possibly 66:3 138:11 post 279:25 299:20 potential 102:3 183:23,23 potentially 123:14 169:17 169:21 226:14 236:15 practice 210:9 227:9,10 228:5 preceding 254:17 precisely 27:13 prefer 66:9 229:11	preference 221:21 preferred 68:10 93:3,19 93:23 209:4,9 preliminaries 6:7 preliminary 44:23 preparation 8:14,19 9:4,8 9:16,21 17:6,8 44:4 46:8 197:3 prepare 7:10 7:18 135:5 277:10,11 prepared 7:15 261:13 preparing 13:15 16:21 17:25 44:6 184:13 224:12 234:9 254:20 present 2:14 67:20 104:22 146:25 249:5 272:7 presentation 219:14 presentations 71:17 presented 67:17,19 104:25 141:17	200:21 216:15 216:22 217:20 218:5,6 260:18 260:22 266:12 270:25 276:3 president 23:5 53:24 54:3 presumed 8:24 pretty 64:16,23 65:17 75:24 101:23 102:15 144:18 145:3 173:12 187:12 192:22,23 217:9,14 219:8 235:8 280:5 298:11 299:2 306:8 prevalent 52:13 previous 178:7 181:19,20,23 292:3 previously 115:5 price 90:13 92:17 96:5 pricing 99:8 primarily 68:8 142:9 143:2 primary 27:10 principal 70:5 printed 11:17 printing 144:8
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[prior - program]

Page 53

<p>prior 13:2,5,7 13:10,12 18:22 19:20 49:4,8 49:10 53:10 96:25 153:10 153:10,14 155:5,13 157:16 216:15 217:16 218:9 235:21 237:23 238:17,19 242:21 259:4 295:24 304:20 313:8</p> <p>private 39:6</p> <p>privileged 32:24</p> <p>proactive 264:3</p> <p>proactively 264:5</p> <p>probability 79:24 90:23</p> <p>probably 7:23 9:12 13:4 14:6 15:20 18:17,17 21:17 22:6 25:7 29:4 51:5 57:5 59:2,4 62:14,22 63:3 63:3,4 65:25 66:22 67:22,24 69:16 72:9 80:10,16 87:9 90:2 92:21,24 93:7,12 96:12</p>	<p>97:5,22 98:5 98:11 99:16 102:8 103:10 109:13 113:8,8 114:11 118:6 119:16 120:10 124:9 129:3 131:3 133:15 133:20,20,21 133:22 134:6 134:10 135:3 136:8 144:16 148:4 179:13 180:19 193:10 216:21 217:10 236:23 250:13 252:7 255:5,11 274:6 278:10 284:20 294:22 295:18 305:2 305:14</p> <p>problem 31:14 48:10 97:8 117:22 124:4 124:12,15 137:23 161:14 164:25 170:24 173:23 192:19 194:17</p> <p>problems 110:25 138:9</p> <p>procedures 225:12</p> <p>proceed 39:25</p>	<p>proceeding 4:23 311:4</p> <p>proceedings 313:15</p> <p>process 14:6,14 17:24 18:14 22:4,15 23:2,7 23:16 24:8,14 24:17 26:3 28:7,11,14 32:11,13,14,15 32:18,19 34:7 34:11 35:25 36:9 37:11,16 41:20 45:23 48:14 52:20 53:4 59:6,12 59:14,21,23 75:4 76:4,5 77:13,14,23 78:11,14,18 91:14 93:13 103:16,17,18 104:18 121:23 121:24 126:3 135:11 136:6 137:4 138:2,5 138:9 139:8 141:16,21 147:12,23 150:23 151:13 151:19 153:4 153:22 155:21 156:21 158:12 159:2 161:8</p>	<p>164:12 165:4 166:21 168:6 168:17 169:2,9 169:10 170:25 174:8,16 185:24 197:21 209:14 210:2,9 211:9,14,23 212:14,25 213:4,6,7,8,10 213:12,19,20 213:23 214:8 214:19 227:13 228:25 240:17 240:25 251:19 297:25 304:16</p> <p>processes 60:2 83:17 94:10 105:14 139:4 151:6 175:10 217:7</p> <p>produce 143:21</p> <p>produced 143:20</p> <p>product 27:10 68:17,18 72:17 109:2</p> <p>products 72:14 93:12 131:3 142:11</p> <p>profiles 224:22</p> <p>profit 23:4,24 292:19</p> <p>program 88:15 91:8 92:16,19</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[program - q1]

Page 54

112:6,16 project 61:14 61:19,24 79:24 80:19,23 265:4 projected 99:23 projecting 113:17 projects 61:20 88:9 296:9 promoting 130:23 174:8 pronouns 180:21 proprietary 27:10 30:5,22 52:25 protecting 100:7 provide 19:17 19:19 25:17 29:22 31:6 32:10 34:21 36:16 41:7,14 43:13,18 60:4 63:9,12,18 64:14 71:6,17 71:21,23 72:9 72:13,18,23 73:11,13 74:4 109:4,8 138:3 169:2 174:5 214:8 224:20 225:5 263:7,9	provided 10:6 10:9 14:22 19:14,24 27:9 29:12 30:23 31:3 33:8 37:10 41:17 54:7,12 55:16 61:9,16 62:9 63:8,13 74:7 76:20,21 106:16 111:5 134:15,20 160:5 195:24 208:19 211:18 214:22 216:13 219:3 252:3 263:2,15 296:25 313:18 providers 209:15 211:6 225:17,23 272:3 provides 131:24 providing 22:19 29:7 34:10 38:19 55:5,12,13 56:15,19 73:2 97:15 133:14 137:11 145:2 153:24 213:2 245:7 294:17 294:18,25	proximity 102:15 proxy 113:10 113:11 prudence 22:3 22:15 28:17 82:11 91:24 308:13 prudency 214:6 prudent 51:24 52:3,7 60:17 81:17 82:8 137:14 145:20 150:23,25 212:6 227:8,23 228:6 309:2 prudently 224:22 psa 53:10,17,25 55:11 56:8,9 56:18,19 58:4 58:21 60:16 61:9 64:11 95:15 129:19 129:21 132:22 136:11,16,23 141:24 142:12 142:18 145:5 211:18 221:6 309:16 public 1:18 5:7 32:23 130:17 312:25 313:6 317:19	pull 16:11 171:22 241:21 257:11 264:10 265:12 266:7 270:11 281:24 299:3 307:17 punch 274:20 purely 18:3 purpose 73:2 74:23 154:25 165:18 174:5 222:24 275:9,9 purposes 87:2 278:22 pursuant 1:17 175:19 put 34:4 42:23 105:24 110:14 111:7,20,25 113:15 118:2 118:12 119:21 120:2 136:3 149:7,14 169:24 170:24 187:16 203:20 229:21 259:18 288:3 299:11 putting 14:18 90:6 117:20 118:11 259:22 q q1 150:7 257:12,14,17 257:18 264:12 264:16,18,19
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[q1 - ran]

Page 55

276:23 277:3 279:6,8 300:13 301:7 314:12 314:15 q2 300:18 301:13 304:21 q3 240:20 247:8 300:2,5 300:22 301:15 q4 241:22,23 242:8,17,18 243:16 244:22 257:16 266:12 276:23 279:4 300:11 301:4 314:10 qdia 73:7 206:21,25 207:7 296:22 qirs 254:2 qpa 208:19 224:16 233:14 234:14 235:2 236:13 263:18 qualitative 67:25 83:18 104:21,24 106:5,19,21 107:8 188:4,12 254:8 quality 63:7 134:14 quanta 1:9 2:16 4:8 5:16 162:4 261:15	316:4 317:1 quanta's 161:8 quantitative 67:24 68:2 74:2 76:9 104:21 107:17 164:15 188:5 188:12 quarter 41:5 70:23 107:12 107:12 109:12 115:21,25 116:6,8,14,24 117:3,5,5 118:3,6,7 119:5,17 120:13 124:3 149:25 167:25 168:5 169:6,11 169:14 170:22 176:17 186:9 186:14,21 197:9 200:16 201:18 206:15 242:2,3 243:11 247:15 249:24 250:16,18,20 258:6 270:12 270:16 295:19 298:10 299:21 quarter's 260:3 quarterly 7:22 41:3 43:13 68:4 69:19 73:12,14 74:4	82:15,18 135:2 146:17 187:24 200:20 214:21 215:15 216:12 217:21,22 238:16 251:4,7 251:11 252:4,6 276:3 294:18 304:6 quarters 121:9 122:2 168:3 169:16 171:11 186:5 189:18 190:7 200:18 201:4 276:22 301:18 quasi 30:6 33:16 question 3:8 6:13,14,20,21 22:14 61:11 119:22 136:11 153:17 154:17 159:19 168:18 169:10 172:8 184:20 199:25 204:13 207:25 211:16 215:9 215:18 216:24 223:10 228:16 231:2 233:9 236:12 239:7 246:16 247:3 272:22 275:18 280:21 293:7	questions 41:15 41:20 76:14 77:15 82:6 112:3 126:6 155:7,22 161:4 199:24 310:9 quick 112:6 114:9 quite 15:4 22:9 104:16 106:25 111:17 138:19 139:5 143:24 178:13,18 207:16 213:23 251:6 274:5 quote 15:17 47:11 70:19 97:13 209:5 227:7 228:4 249:20 quoted 179:5 quotes 48:16 quoting 107:19 r r 2:2 68:21 115:2 313:1 rabbit 125:15 raise 112:2 223:4 259:17 raises 111:22 119:21 154:17 raising 226:17 239:7 ran 49:25 54:25 55:23,24
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[ran - recall]

Page 56

56:3 97:10 148:10 168:21 239:12 range 62:8,15 62:23 63:23 65:14 77:7 101:21,24 102:16,18,21 133:19 134:3 134:13 137:16 137:16 138:13 rank 123:23 179:16 rare 109:15 rate 62:18 89:11,25 95:23 96:16 125:5,5 125:6 rates 79:15,17 176:15 247:13 249:22 rather 52:14 65:6 181:9 191:25 213:14 255:18 273:12 ratio 65:12 66:9,10,10,11 66:13,24 67:4 67:5 68:16,21 183:21 240:9 241:9 244:10 rationale 194:11 195:4 198:18 206:7	rationalization 192:21 ratios 65:12 66:12 67:12 72:2 243:14 269:19,24 raw 68:4 207:10 reach 126:14 127:2 150:24 226:15 230:4 reached 168:11 191:19 273:25 read 7:19,20,21 8:9,11,14,19 10:10,13 11:3 11:4,13 44:10 44:11,12 45:8 46:6 48:3,18 69:10 128:10 128:15 146:15 148:24 177:9 179:22 180:10 180:23 186:15 186:18 192:20 197:21,24 198:4,6,8,9,10 198:15 242:22 252:21 272:15 316:9 317:5 reading 11:9 45:2 148:23 179:25 180:20 237:10,14	reads 159:12 real 75:13 92:2 105:17 108:23 108:24 realistic 196:19 reality 217:2 realize 138:19 212:11 274:13 realized 184:8 really 12:6 16:22 75:17,22 76:5 79:4,11 81:17 94:7,14 98:2 99:4 103:7 110:20 118:6 125:9 141:10 160:7 170:24 186:23 192:23 213:13 213:14 262:9 309:5 realtime 108:24 reason 7:6 19:22 54:13 72:24 128:23 157:10,11 161:7 167:6 170:13 202:11 202:12,16 203:21 252:15 253:3,21 258:5 258:21 283:21 286:20 290:21 291:3,5 312:6 316:11	reasonable 23:3,24 81:15 104:10 110:13 118:10 121:15 147:12,22 151:6,13 153:3 207:24 reasonableness 151:19 reasonably 306:12 reasoning 272:2 reasons 84:13 84:15 95:12 139:7 143:4 157:9 178:10 178:16 182:3 182:15 194:25 287:18 rebuttal 8:11 46:20 recall 11:9 12:4 12:22 20:6,9 20:14 22:12,19 23:9 31:22 33:7 34:25 36:11 41:13,18 43:5,16 45:9 50:22,23 51:23 53:3,5 54:6 59:25 60:2 63:24,25 96:20 112:9 116:16 143:13 153:14
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[recall - regard]

Page 57

161:5 170:10	recollection	228:14 229:25	referencing
170:17 197:17	15:16,21 16:15	230:5,20,23	100:22 238:14
199:18 211:3	29:11,16,17	236:8 237:21	referral 59:17
214:13 218:7	35:5 37:18	276:5 281:11	59:18
235:25 238:22	42:11 60:8	281:14 306:24	referred 27:8
243:3,5,8	96:17 166:5	307:3 308:12	78:22 180:17
244:3,18	198:12 220:7	309:10 311:11	242:3
256:17 257:9	237:12,22	recorded 4:3	referring 13:20
258:24 261:7	265:8 296:17	65:21 311:4,6	13:23 26:23
275:24 281:16	297:13 298:16	recorder	146:20,21
296:13,21	303:25	150:10	147:16,17
297:22 298:12	recommend	recordkeeping	169:14 194:6
304:4,9	93:15 95:10	21:3,5 27:21	233:5,23
receipt 316:17	98:6,12 210:17	28:3 308:11	243:22 249:15
receive 252:12	recommendat...	309:9	refers 179:13
received 15:17	30:21	recreate 16:6	180:14
28:4 30:16	recommendat...	recurred 96:14	reflect 199:17
41:25 42:3	23:22 211:21	recurring	228:23 229:15
77:3 163:23	recommended	96:13	229:18 230:5,7
166:12 215:14	93:2 297:4,6	redone 192:17	238:20 273:25
receiving 251:4	recommending	reduce 309:17	reflected 42:17
251:10,13,16	27:15	reduced 313:13	199:23 201:19
253:24 254:3	record 4:24	refer 78:16	238:25
262:17	5:21 12:8,11	161:16 179:22	reflecting
recent 176:16	12:15,18 28:5	215:6	112:17
247:15 249:23	39:22 50:6,9	reference 47:11	refresh 29:10
recess 12:16	50:12,16 69:3	111:21 169:7	46:12 237:11
50:10 69:4	69:6,10 114:12	180:23 231:16	265:7 296:17
114:15 148:19	114:14 115:9	238:13 242:20	298:16
177:4 230:21	128:15 131:15	referenced	refreshed
281:12 306:25	131:22 148:15	233:9 238:11	237:22
recognize	148:18,21,24	316:6	refused 137:19
193:17 276:11	154:19 155:12	references	regard 48:14
283:2 287:9	177:3,6,9	146:4 172:17	51:13 106:4
	219:20 226:8		126:6 135:13

[regard - report]

Page 58

160:12 182:11 304:6 regarding 219:20 232:8 254:12 304:2 regardless 203:19 204:11 220:3 region 25:5 reimburse 140:19 reiterates 221:16 relate 246:18 247:5 related 28:7 55:5 105:11 107:25 relates 95:17 185:15 244:2 246:3 relating 149:16 relationship 132:13,14 164:23 282:20 284:12 289:22 293:16 295:20 297:20 298:8 relationships 130:8,10 132:21,21,24 133:6,22 relative 77:11 170:7 179:23 204:25 262:11	277:16 relevant 44:13 45:5 48:12 108:14 146:4 146:18,19 153:16 155:24 158:4,5 188:4 188:5 214:13 214:17 215:12 215:20 219:2 244:17 245:2 relied 40:16 42:18 relies 232:22 relying 207:21 261:18 remain 133:2 178:12 182:5 186:4 remained 271:24 remember 8:13 10:8 11:6 15:24 20:17,25 22:7 24:25 25:2,3,6,9,15 28:15 29:25 31:11,16,18 32:21 33:11,18 35:8,13,16 36:7,19,24 37:5,7,10 43:3 51:2 52:22 58:19 60:11 66:25 67:22	72:10 131:13 137:21 152:14 153:11 158:18 184:18,20 193:20 195:14 197:8 199:5,8 216:5 218:7 255:12 296:7 304:8 remembering 35:11 37:3,8 71:3 143:23 remembers 199:2 remind 241:2 298:6 remit 168:16 remote 1:16 4:4 311:7 remotely 5:2 removal 63:19 121:11 189:5 190:10 287:14 287:19,23 297:5 remove 107:4 122:19 157:7 157:12 170:14 202:7 208:7,9 229:21 286:17 297:6,10 removed 122:13 138:6,7 157:2 168:8,13 171:6,16,20	302:4,8 removing 32:8 repeat 128:8,14 283:22 rephrase 128:13 replace 60:5 80:12 188:6,23 260:9 replaced 178:12 182:5 304:15 replacing 60:9 report 5:19 7:19 8:11 9:23 10:2,6 11:18 13:16 14:4,5 14:16,23 15:10 15:14,18,23 16:10,16,21 17:7,25 18:15 18:16,18 19:2 21:18 22:19 24:16 26:16 28:10 29:5,10 34:20 39:13,15 39:20,20 40:3 40:10 44:6 46:8,20,21 47:4,8 48:2 49:4 53:16 62:10 65:9,11 66:4,8,17 68:3 68:17,18,20 69:13,23 70:22
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[report - respect]

Page 59

77:3,9 82:15	244:23 245:13	250:21 256:5	requests 41:13
106:12 107:7	250:11 252:7,8	284:17,24	require 111:10
110:13 140:9	254:9,12,12,14	294:18	115:22 121:10
140:13 146:3,8	254:15,20,21	reports 7:23,23	209:18,22,24
147:6 148:2,10	254:24 256:2	10:14,22 11:2	210:5,6 219:9
149:22 150:12	256:10,14	11:10 41:3	220:12,14,17
150:15 151:16	257:2 259:7,8	43:14 64:22	220:20,24
152:13,25	260:12,23	68:22 72:19	221:4
155:17 158:14	261:2 265:17	75:15 76:20,24	required 34:3
158:16,17,20	267:12 270:7	135:2,5 197:17	39:4 227:3,7
159:4,9 160:23	276:8 277:8,12	197:22 238:17	230:3 317:13
161:17 165:8,9	286:14 287:13	238:19 251:5,7	requirement
165:12 166:9	290:4,5 294:10	251:11 252:4	104:4
167:21 171:13	314:5	260:4 263:2	requires 83:7
172:18 173:10	reported	276:4	241:9 244:9
183:10 184:14	159:10 201:22	represent 5:16	247:19 252:10
187:19,20	236:13 245:8	195:16 247:8	253:6
190:23 194:18	reporter 1:18	266:11 308:9	reread 8:8
195:17,24	4:18,22,25 5:3	representing	reroute 129:17
196:5,12,15	68:23 313:5,19	229:5	rerun 73:21
197:4,4,16	reporting	reputation	82:16,17 83:4
198:14 199:16	59:12 64:12,17	287:4	83:21
200:5 202:19	67:13 69:21	reputational	research 58:6,7
203:2 206:20	106:6 109:4	106:2	58:9 135:4
208:18 216:9	110:20 111:2,4	request 41:10	142:8
221:12 223:18	123:18 135:4	261:14,19	reserved 3:8
223:21 225:8	142:19,20,23	265:10	resolved
226:2 231:15	142:25 143:9	requested 43:5	203:13,15
231:18 232:10	143:12,15,16	69:10 128:15	resonate 48:9
232:15 233:25	143:19 144:3	148:24 177:9	resources
234:10,11	144:19,22,23	261:23 262:19	143:7
235:25 236:9	159:14 160:4	265:9 313:17	respect 36:8
237:2,25	161:12 162:7	313:17	37:12 60:15
238:25 239:9	163:7 172:21	requesting	70:7,10,25
242:3,24	235:6 250:20	261:7	74:10,18 76:19

[respect - riddle]

Page 60

132:20 136:4 136:13,22 153:20 154:4 159:23 160:20 165:5 167:22 259:9 297:2 respective 3:4 respond 214:5 response 127:15,16 responsibilities 51:13 223:23 224:9 289:23 responsibility 132:2,10 136:19 137:8 160:17 219:4 responsible 51:15 130:7,15 132:23 133:3 142:9 265:20 284:12 rest 284:21 rests 79:4 result 24:13 255:25 260:7 261:8 resulted 171:19 255:2 259:8 260:7 results 226:10 resumed 20:3 115:5 retain 188:6,23	retained 11:20 11:23 12:22,23 13:2,5,8 retainer 61:12 61:16 62:2 retaining 32:8 35:25 36:2 37:12 82:12 142:5 retention 13:11 13:13 34:8,12 62:18 retire 102:22 retired 26:8 33:16 39:8 130:5 retiree 88:20 retirement 61:2 72:6,7 80:4 87:14 89:22 98:22 99:2 101:18 102:25 103:22 104:10 136:2 181:6 275:17 282:10 retiring 133:7 return 113:2 176:15 179:16 183:20 224:21 241:14 247:13 249:22 308:21 316:13,16 returns 28:24 65:10,11 68:15 71:25 86:15,16	86:17,18,22 88:9,10,21,25 90:10 94:12 99:24 100:13 113:5,7,22 210:6 251:23 252:3 266:2,3 267:24 268:4,8 268:12,21 269:20,22 276:25 reuters 254:14 254:15 revenue 28:4 140:15 reverse 47:9 49:8 review 9:25 10:3 15:7 40:19,23 41:4 41:8 42:16 43:6 44:4,7 67:18 74:8 135:5 149:16 149:17 152:17 152:24 166:20 166:25 167:20 173:9 175:9,9 177:21 187:25 191:7 198:11 199:2 200:21 208:18 209:19 216:12 238:16 251:8,9 254:19 256:8 265:4	271:24 275:21 308:8 313:16 316:7 reviewed 9:22 12:23,25 42:3 42:20 149:19 149:20 150:2,6 157:8 191:10 193:14 195:12 195:18 197:2,7 255:23 271:13 reviewing 183:6 186:16 209:14 242:13 252:22 258:4 reviews 214:21 revised 193:15 rewrite 110:18 rfi 209:6 210:18 212:9 212:15 rfp 32:14 59:21 59:23,25 60:3 60:9 208:23 209:3,5,8,13 210:18 211:2 212:9,12 213:9 213:23 rhythm 6:16 rich 43:25 46:23 217:14 richer 209:10 riddle 46:14 261:10
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[ride - saying]

Page 61

ride 88:3 97:23 98:4 right 9:23 10:11 19:22 26:12 29:20 39:9 50:18 51:17 61:2 66:23 71:4 74:5 76:22 77:23 79:7,8 85:14 88:2 98:25 119:12 120:14 122:24 127:10 129:12 140:5 143:23 150:8 155:17 173:6 175:4,7 196:24 200:9 201:22 202:15 205:4 222:7 223:22 231:25 234:4 240:2 242:5 243:12 249:18 253:4,8 254:17 270:16 273:14 274:25 279:15 289:10 289:13 298:20 300:5 308:6 rigorous 213:16 ring 16:13 risk 65:11 67:3 68:15 105:18 106:2 144:25	183:19 210:6 224:21 241:13 255:8 259:23 266:2 268:21 riskier 255:2 rmd 39:5 road 312:2 roberts 2:5 5:9 9:11 74:13,20 122:14 128:6 139:21 155:19 157:17 163:20 166:23 172:6 180:11 198:21 212:10 219:23 227:25 230:14 281:9 287:24 291:2 310:10 316:1 robust 64:16 139:3 217:15 role 24:18,21 27:15 45:13,22 49:23 50:20,24 51:9 52:5 53:9 130:4,22 131:6 136:4 168:25 208:15 289:20 293:12,17 295:3 roles 51:18 224:9 roll 33:24 55:19 101:15	roller 98:4 rolling 118:9 125:12 rollover 39:3 room 140:13 211:7 roughly 80:7 routes 86:3 row 86:16 rowe 90:13 92:17 96:5 rule 189:19 rules 140:22 run 25:21 77:18 80:25 85:19 86:4,12 86:23 89:5,10 89:14,24 90:10 90:11,15,18 91:2,4 92:16 92:19,20 93:5 93:7,11 110:24 112:16 232:19 255:15 running 29:8 49:15 86:20 112:24 113:18 113:19,20,21 runoff 255:7 runs 92:21 146:25 148:6 rupp 46:14 48:17 russell 113:11	s s 2:2 5:6 115:2 115:2,2,4 281:21,21 312:6 314:2 315:2 s&p 23:25 276:17 277:2 298:18,19,22 299:7,15 301:22 302:15 303:3 315:9 salient 14:10 66:7 69:17 satisfactory 84:21 save 104:8,15 275:16 saving 81:9 savvy 138:20 138:22 saw 43:11 214:24 217:16 261:24 283:12 saying 23:6 27:14 60:14 67:10 75:24 84:2,6 117:20 120:11 128:16 143:18 146:22 155:9 164:4 176:23 178:15 178:19 180:15 183:22 186:17 186:18 188:16
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[saying - see]

Page 62

188:16 194:9	261:12 262:9	237:6,13,16,22	181:14 182:19
226:16 246:9	262:14 264:23	237:25 238:9	185:10,11
246:22 247:18	271:13 276:16	238:11,20,24	187:6,19
248:19,25	282:19,20	239:3,15,25	241:11,14
249:3 257:7	286:3 303:14	240:7,17	243:13 247:5
264:4,8 273:11	scenario	243:19 244:3	251:18 266:25
273:16 294:19	124:19	245:21 246:13	270:15 285:12
302:8	schedule 282:5	246:19 247:7	295:19 298:9
says 87:17,19	285:10,17,19	247:21 248:8	299:21
101:6 110:11	288:23,25	249:9 251:2,9	section 15:4
111:15,17	291:20,22	251:24 252:5	245:24 246:3
121:21,22,22	293:5,25 294:2	252:10 253:6	security 38:25
125:18 147:10	294:15	screens 97:18	80:14 87:15
151:5 174:4,22	schlichter	98:8	see 19:8 21:17
174:23 175:6	26:24,25 30:2	scrutinize	21:19 26:17
175:15 176:2	35:3	276:12	36:21 43:10,11
176:14 177:18	score 145:6	scrutiny 73:8	43:15,25 45:21
178:8 179:3,19	163:4,8,12,12	83:2,7 84:2,25	46:16,17 85:20
179:19,24	163:16,25	85:7 117:21	86:25 87:10
180:3,15	164:7,8,10,16	129:11,14	94:8 105:11
181:14,21,25	236:7 252:12	206:25 207:5,6	108:14,19
182:6,14 183:4	252:20	207:23 208:3,4	109:8 113:24
185:12 186:2	scorecard	239:14 296:25	116:2 118:9
187:6 188:21	163:5	se 192:6 209:3	119:25 121:2
188:24 189:3	scores 162:20	249:8	121:21,21
189:12 201:2	163:19	sealing 3:5	124:7,14
201:17 203:12	scoring 65:4,5	search 30:12	130:20 144:8
221:14 224:18	65:6 125:6	165:15	147:13 155:11
225:8,12,17,21	143:14 145:4,7	season 85:23	157:23 162:11
237:6 238:8,13	145:15,24	second 27:21	162:21,23
240:15 241:7	162:2 166:6,13	35:20 54:12	164:8 166:10
241:19 242:7	167:7 233:14	68:24 112:6	167:7 172:22
246:7 247:2,11	234:15,20,23	146:10,16	174:9 175:20
249:19 251:19	235:10,21	154:22 172:4	176:5,13,19
252:10 257:19	236:11,17,24	175:15 178:8	177:11,22

[see - services]

Page 63

182:23,25	258:24	self 74:24	series 71:14
183:3 186:9	seem 112:2	send 15:8	77:16 78:21
187:9 188:7	121:4 155:9,10	263:18	79:3,10 80:2
189:5 200:13	191:25 192:19	sends 170:9	81:6,12 83:10
200:18,24	226:2 244:15	263:19	87:22 91:18
201:8 202:8	250:9 262:22	sense 38:10	100:4 194:20
208:12 216:16	272:22	73:15 91:25	255:17 272:17
222:4 224:4,8	seemed 251:17	101:10 125:8	303:4
224:13,14,18	seems 33:17	148:5 155:23	serious 141:14
224:23 225:7	99:14 175:4	192:24 195:20	seriously 76:18
225:11,16,20	214:19 226:24	204:3 206:8	137:22
228:14 233:2	seen 43:2,18,18	218:14 226:19	serve 19:11
235:24 237:9	94:9 95:4	sensitive 208:5	20:6 49:10
239:17 240:21	124:24 183:22	sent 262:6	53:10,12 57:4
242:7 243:16	183:25 274:16	316:14	58:21 131:7
247:16,17,25	select 97:16	sentence	165:18
248:5 249:16	144:7 156:5	146:16 151:25	served 10:2
250:2 251:25	207:13	175:15 176:13	18:22 19:3,6
252:16 256:6	selected 51:21	176:20 177:18	19:11 50:17
256:13 257:19	82:11 153:9	179:5,18,19	58:15 67:20
261:3,16	154:18 156:4	180:10 181:14	74:16 104:23
262:10 265:21	selecting 35:25	182:14 185:11	129:20 131:9
266:5,20 267:6	36:9 37:12	187:6 189:3	131:20 299:19
270:25 272:3	52:18,21 82:9	225:20 243:13	service 26:8
272:25 273:5	142:4 224:15	261:12 270:23	59:8 63:10,14
276:13,19	224:19	separate 54:19	63:15 134:20
277:5 282:11	selection 23:8	55:22 139:24	137:10 209:15
282:14,23	34:7,12 63:19	212:12 250:20	211:6 225:17
285:14 286:3,9	73:16 77:13,21	separately	263:10
288:16 289:5,7	78:2,5,14,18	54:22 187:9	services 1:9
291:12,16,23	79:23 91:13,14	250:25	2:16 4:8 5:16
292:3,7,21	93:18 154:20	sequence 88:10	19:20,24 25:17
294:5	155:3,21 219:5	sequences	27:8 38:12,19
seeing 170:11	selections 24:9	113:2	54:8,13 55:5
170:17 197:17	51:16		55:11,12,16

[services - six]

Page 64

56:15,20 60:4 61:10,17 62:9 63:7,11 133:14 134:14 208:19 208:24 211:18 213:2 225:22 308:13 316:4 317:1 servicing 58:9 serving 131:10 283:19 308:5 set 29:7 109:24 140:18 194:7 210:14 223:24 258:15 sets 137:16 138:13 224:8 224:10 settled 26:15 36:6 59:11 seven 16:3 several 8:17 27:19 42:5 58:7 82:23 96:20 146:4 222:6,15 280:7 293:4 300:9 303:7 shah 2:2 13:20 15:12 37:19,20 37:23 share 39:17,18 207:10 255:20 264:16 266:8 291:11	shareholder 130:3 sharing 23:4,25 140:15 292:19 sharp 68:16 sharpe 65:12 66:9,10 67:4 sheet 219:10 312:1 316:11 shell 26:21 27:2 27:17,19 shift 132:10 ship 294:12 shop 143:25 short 113:16 115:12 129:5 194:3 242:19 shorthand 1:18 313:5,12 shortly 10:3 show 66:2 68:10 85:25 103:22 141:18 144:12 146:7 158:19 198:23 208:8 260:3 showing 24:4 75:23 159:15 162:12,19 164:10 205:18 258:15 264:2 299:13 shows 44:23 86:2 201:5 259:4 266:14	266:20 288:19 292:25 side 24:2 141:2 sign 316:12 signal 170:10 signature 313:23 signed 3:11,14 12:2 15:11 16:10 57:12 172:16 184:17 216:6 295:22 297:24 304:25 316:19 significant 152:6 194:2 202:4,24 203:16 235:19 256:4 signs 201:5 similar 15:25 35:21,21 54:13 67:7 108:15 121:6,18 125:25 136:10 263:2 similarly 277:4 simple 85:18 103:20 125:7 simply 139:19 197:25 229:19 259:14 262:14 263:17 simulated 112:7	simulation 82:17 85:14 86:9 87:16 88:8 90:10 97:9 112:19 simulations 80:20 81:2 85:20 86:4 112:9 single 40:20 41:4,5 42:24 44:16 67:23 91:12 106:9 115:21 116:24 117:3 127:16 137:25 188:10 191:13,16,23 192:16 194:19 197:3,15,18 210:23 211:3 211:13 219:9 221:5 277:18 277:19 309:14 sir 165:9 sitting 16:7 150:14 158:23 159:20 165:24 211:7 212:22 219:12 258:22 290:22 295:3 situation 12:21 15:11 116:12 129:12 six 5:25 6:2 16:3 48:16
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[six - speculate]

Page 65

51:5 93:6 94:18 97:11 189:18 190:7 293:10 sizable 52:14 size 25:4 62:8 62:19,22 63:6 133:19 137:17 skeptical 125:11 skill 137:16 138:13 210:14 slice 108:22 slightly 45:20 133:23 189:15 193:11 205:7 302:20 slocum 282:23 283:3 284:19 small 57:8 62:10 64:2 103:12 133:19 133:21 134:16 242:11 306:5 308:22 smaller 22:22 64:3 139:5 smallest 62:13 smooth 88:3 smoother 100:4 100:19 snapshot 103:15 108:10 snyder 31:5	social 38:24 80:14 87:15 software 235:5 sold 55:2 56:3 62:3,12 129:21 130:9 141:25 142:17 sole 58:13 239:16 solely 232:22 solutions 4:16 312:1 316:23 solving 88:17 somebody 23:4 42:22 44:15 80:13 81:3 93:9 95:8 99:3 108:8 135:12 135:16 138:4 141:9,24 209:7 226:11 293:19 293:20 somewhat 189:10 sophistication 137:17 sorry 12:5 19:13 31:17 50:14 56:24 111:11 142:17 165:11 220:25 231:22 232:17 248:4 266:18 281:19 283:22 288:22 298:6	sort 6:12 47:22 64:13 129:18 143:11 145:6 166:6 206:24 219:20 304:10 sortino 66:13 66:24 sounds 11:19 48:12 150:8 196:3 218:3 235:4 265:10 283:3 290:16 296:19,20 source 38:18 sources 38:23 southern 1:3 4:11 spain 1:18 4:6 5:22,24 289:24 speak 9:4,7,10 9:16 39:19 97:22 115:14 116:18 141:8 141:10 186:23 188:17 232:11 232:13 284:5 287:2,25 291:9 297:17 speaking 74:3 80:6 114:3 130:17 141:3 143:12 144:15 146:5 173:12 189:12 244:2	speaks 170:20 241:12 spearheading 142:9 special 254:12 256:14 257:2 259:8 290:4 specialist 4:15 specific 41:13 49:23 60:7 61:20 71:20 73:19,22 76:25 83:10 109:3,5 116:16 153:5 153:19 154:2 158:18 165:4 165:17,25 169:6,7 190:18 199:5 209:18 211:11 215:7 233:5 256:13 263:12,12,16 303:24 304:4 specifically 109:19 111:10 160:4 161:6 162:5 172:13 204:11 209:12 215:6 244:13 304:10 specifics 309:13 speculate 18:9 18:11
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[speculation - stone]

Page 66

speculation 18:12	ss 313:3	starting 102:23	202:8,13 203:3
sped 45:8	stability 94:10	148:3 300:2	203:8 206:3
speed 44:12	105:10	state 1:19 96:9	239:14 241:10
spend 5:25 6:6	staff 26:2 30:20	185:8 187:23	242:8 243:7,9
44:15,19 75:3	131:5 141:11	225:25 229:6	243:10 244:9
78:8 83:14,16	142:12 305:10	250:11 280:12	251:23 252:16
107:11 127:7	stage 25:6	296:18 297:2	253:4,22
152:2	83:22 288:6	297:14 298:13	257:21 258:8
spending	stand 15:10	298:17 299:6	stayed 130:11
140:20	standard 4:14	299:14,17	142:23 168:8
spent 16:20	114:16 210:9	300:2,23	stenographic
17:23 46:9	235:6,25 236:3	302:21,23	4:23
74:22 76:3,7	277:4	303:6 304:18	step 7:14,15
208:13 309:19	standardized	305:11,12,18	120:10 122:4
spit 144:4	65:18 77:3	305:20 306:7	133:11,11
split 56:10,11	standards	313:2,6 315:8	173:25
267:4	179:23 187:8	stated 178:9,22	steps 211:11
spoke 9:19	237:8 239:12	178:24 179:4,7	sterling 287:4
spoken 105:7	245:22 246:14	179:11,13,20	stick 243:12
217:19 218:22	standing	179:21 180:4,7	stipulate 4:24
218:24,25	255:25	180:18 182:2	stipulated 3:2,6
spokespeople	stands 301:10	182:15 185:13	3:10 4:21
130:16	star 143:21	206:10	stipulations
sponsor 49:9	277:22	statement 7:21	311:3
54:24 55:19	start 36:12	109:20,21,23	stocks 39:6
56:3 57:4,16	46:3 49:7	110:9,10 111:9	stone 1:17 4:4
57:23 59:16	56:18 86:15	181:9 189:9	5:12 6:1 7:1,9
sponsors 53:17	87:2,24 94:22	223:7 224:4	8:1 9:1 10:1
spot 42:20,23	102:15 132:17	states 1:2 4:10	11:1,16 12:1
42:25 277:17	170:13 233:11	status 177:20	12:20 13:1
277:20	276:22 282:8	178:2 181:16	14:1 15:1 16:1
spun 21:8	started 26:11	186:4,5,7,13,20	17:1 18:1 19:1
squared 68:21	64:5 132:18	186:22 187:4,8	20:1 21:1 22:1
	135:22 152:18	200:10,17	23:1 24:1 25:1
	235:6 279:5	201:4,6,8,21	26:1 27:1 28:1

[stone - stone's]

Page 67

29:1,9 30:1	115:11 116:1	184:1 185:1	254:1 255:1
31:1 32:1 33:1	117:1 118:1	186:1 187:1,20	256:1 257:1
34:1 35:1 36:1	119:1 120:1	188:1 189:1	258:1 259:1
37:1 38:1 39:1	121:1 122:1	190:1 191:1,2	260:1,17 261:1
39:15,16,24	123:1 124:1	192:1 193:1	262:1 263:1
40:1,2 41:1	125:1 126:1,9	194:1 195:1	264:1 265:1,16
42:1 43:1 44:1	127:1 128:1	196:1 197:1	266:1 267:1
45:1 46:1 47:1	129:1,16 130:1	198:1 199:1	268:1 269:1
48:1 49:1 50:1	131:1 132:1	200:1 201:1	270:1,13 271:1
50:14,21 51:1	133:1 134:1	202:1 203:1	272:1 273:1
52:1 53:1 54:1	135:1 136:1	204:1 205:1	274:1 275:1
55:1 56:1 57:1	137:1 138:1	206:1 207:1	276:1 277:1
58:1 59:1 60:1	139:1 140:1	208:1,17 209:1	278:1 279:1
61:1 62:1 63:1	141:1 142:1	210:1 211:1	280:1 281:1,16
64:1 65:1 66:1	143:1 144:1	212:1 213:1	282:1 283:1
67:1 68:1 69:1	145:1 146:1,3	214:1 215:1	284:1 285:1
69:12 70:1	147:1 148:1	216:1 217:1	286:1 287:1
71:1 72:1 73:1	149:1 150:1	218:1 219:1	288:1 289:1
74:1 75:1 76:1	151:1 152:1	220:1,12 221:1	290:1,7,12
77:1 78:1 79:1	153:1 154:1	222:1 223:1	291:1 292:1
80:1 81:1 82:1	155:1,2 156:1	224:1 225:1,25	293:1 294:1
83:1 84:1 85:1	157:1 158:1	226:1 227:1	295:1,6 296:1
86:1 87:1 88:1	159:1 160:1	228:1 229:1	297:1 298:1
89:1 90:1 91:1	161:1 162:1	230:1 231:1	299:1,9 300:1
92:1 93:1 94:1	163:1,15 164:1	232:1 233:1	301:1 302:1
95:1 96:1 97:1	165:1 166:1	234:1 235:1	303:1 304:1
98:1 99:1	167:1,19 168:1	236:1 237:1	305:1 306:1
100:1 101:1	169:1 170:1	238:1 239:1	307:1,5,21
102:1 103:1	171:1 172:1,8	240:1 241:1	308:1 309:1
104:1 105:1	172:22 173:1	242:1 243:1	310:1,9,11
106:1 107:1	174:1 175:1	244:1 245:1	311:1,7,16
108:1 109:1	176:1 177:1,15	246:1 247:1	314:6 316:5
110:1 111:1	178:1 179:1	248:1 249:1	317:2,4,12
112:1 113:1	180:1 181:1,12	250:1 251:1	stone's 39:13
114:1,11 115:1	182:1 183:1	252:1 253:1	69:9

[stop - sure]

Page 68

stop 162:19 293:6 stopped 148:12 149:2 150:11 150:16 story 67:7 278:15,19,19 strange 170:9 183:7,12 strategic 293:23 strategies 271:23 strategy 297:21 street 2:3,8 96:9 296:18 297:2,14 298:13,17 299:6,14,17 300:2,23 302:21,23 303:6 304:18 305:11,12,19 305:21 306:8 315:8 stretch 6:17 strike 182:18 strikes 197:23 226:13 struggling 92:13 study 209:8 stuff 42:10 44:23 144:19 197:23 210:11	272:21 273:19 275:5,9 styled 271:20 sub 270:2 subbullet 247:5 subject 171:18 174:18 submit 16:23 submitted 5:19 10:14,22 42:17 60:8 submitting 49:4 60:3 subscribed 311:18 312:23 317:14 subsection 225:7 subsequent 178:21 182:7 subset 42:2 88:23 92:24 93:8 subsidiary 296:10 substantial 255:7,15 substantially 108:9 171:18 205:8 substantive 47:23,25 192:10 246:11 subsumed 250:19,22	subtracting 119:6 succeed 24:13 success 79:2 successful 80:4 87:22 103:24 104:4 successors 162:3 suddenly 117:10 sued 23:5 24:8 307:10 sufficient 217:23 220:3 224:20 225:6 229:23 252:15 253:3 272:2 274:3 suggest 156:10 suggesting 88:14 125:21 259:7 suggests 219:22 suite 2:3 126:7 126:10,13,23 127:25 202:5 202:24 207:15 207:19 summary 269:22,24 supplemental 79:18 supplied 7:25	support 45:8 suppose 115:19 121:7 217:13 supposed 33:16 52:6 83:5 85:10 92:6 218:17 306:16 306:18 suppress 144:10 sure 8:17 12:10 12:11 28:16 38:8 42:6,17 42:25 48:24,25 55:13 67:14 69:15 77:5 80:21 88:12 106:22 109:21 109:22 125:16 128:11 130:11 138:7,10 139:10,11 143:18 144:18 146:10 157:15 175:6 181:19 185:2 186:22 210:14 211:12 229:24 231:3 236:19 270:12 270:16 277:13 285:9,22 293:8 293:12,15,16 294:11 295:17 297:18 298:11 306:9
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[surface - talking]

Page 69

surface 103:20	243:20 244:3	120:21 121:2	206:20 214:10
surprise 301:25	245:21 246:19	125:13,14	214:18 233:22
surprised	247:7,21 251:2	133:11 137:5,8	265:19
256:18,20,23	251:9,24 252:5	137:19,22	talked 22:23
309:12,20	252:10 253:6	156:11 164:13	23:12 29:13
swear 5:3	284:17,24	164:18 165:15	44:3 83:19
switch 115:18	systems 65:5	170:12 173:24	99:25 100:21
switched	143:8,9,12,15	176:25 193:3,9	104:21 107:16
152:11,13	143:17,19,22	199:20 203:9	112:23 141:20
236:4 284:23	144:3,14 145:4	203:22 204:9	142:19 143:11
289:14	145:25 161:24	213:18 227:4	174:21 192:9
sworn 3:12,14	162:2 234:23	230:16,17	217:2,5,6
5:7 115:5	235:3,18 248:8	274:8 279:21	228:20 272:14
311:18 312:23	t	280:22,23,25	277:25 279:19
313:9 317:14	t 5:6 90:13	281:4,6 293:15	279:20
sync 159:12	92:17 96:4	298:5	talking 8:12
178:13 181:24	115:2,4 313:1	taken 1:17 4:6	12:21 17:6,10
182:9 233:15	313:1 314:2	12:16 39:4	47:19 50:16
syncs 14:12	315:2	50:10 69:4	61:4 67:23
181:20	table 24:4	114:15 148:19	69:12 75:19
system 64:17	277:8,10	177:4 192:4,5	78:9 80:16
65:4,7 86:12	280:12,15	194:23 196:18	81:22 87:3
88:21 111:2	286:14 287:12	226:3 230:21	96:2 97:2
123:19 145:6,8	294:10	281:12 283:4	102:9 107:11
145:15 162:15	tailor 76:24	306:25 311:7	112:8,11,12,12
163:14 166:7	263:12	313:11	112:20 119:11
166:13 167:7	tailored 77:4	takes 81:15,16	136:15 143:14
233:15 234:16	261:14	172:3	143:15 145:19
234:20 235:10	take 4:25 6:11	talent 138:25	149:12 151:7
235:17,17,21	6:14 7:14 12:8	talk 14:9 39:20	183:8 190:16
236:5,11,18	12:11 16:11	41:2 45:12	190:17,19
237:6,13,16,23	45:20 76:17	48:7,13 49:6	205:19 206:6
238:2,9,20,24	83:8 86:3 87:6	78:6 95:19	209:23 213:25
239:4,16,19,25	98:21,25	99:18 168:17	215:18 217:24
240:7,17	111:24 114:9	168:25 183:20	217:25 219:3

[talking - thank]

Page 70

227:7,11,13	179:9 181:5,7	295:5 302:10	236:14 263:25
231:7 234:14	205:15 255:17	307:13	277:14
237:17 238:2	260:18 261:8	telling 106:21	test 146:9
242:18 243:19	262:12 264:23	tells 163:19	152:12
243:20 245:20	265:21 266:7	274:6,9 275:18	testified 5:8
254:11 295:13	266:21 267:5	278:19	115:6 174:11
talks 148:2	271:14,23	ten 19:8 141:25	174:14 193:18
183:18	272:2,8,10,17	230:17 251:21	195:2 197:2
target 30:6	276:17 277:2	251:23 252:3	202:10 212:4
32:2 35:7,9,13	292:8 296:13	281:6	216:8 239:22
36:10 37:2,5	297:14 298:19	tend 138:25	243:18,24
37:13 69:21	298:23 301:22	207:17,18	262:25 263:11
70:10,13,17	302:15,18,21	tenure 60:25	295:6
71:2,7,14	303:3 304:18	68:19 105:9	testify 7:7
72:22 73:5,17	305:19,21	252:12,18	313:9
73:20 76:19,22	306:13	253:7,19	testimony 4:4
77:6,7,12,16,21	tdf 270:25	term 33:22	14:22 29:8,12
78:3,5,8,21	276:18	82:22 83:9	29:22 30:24
79:3,10,25	team 93:25	88:20 113:16	31:3 36:16
81:6,12 82:9	105:9 106:9	129:5 242:19	69:9 95:16
82:11 83:10	134:25 253:16	297:2	111:4,8,12
86:9 87:22	teams 17:14	terminal	143:13 152:10
88:22,24 91:13	tech 105:22	271:18	157:18 166:24
91:17 92:15	technical 50:15	terms 24:19	185:14 188:9
93:18 94:17,22	technically	25:23 52:18	193:20 196:10
95:6,22 97:11	305:2	63:17 64:13	219:20 227:22
100:4 101:3	tell 7:2 67:7	67:16,18 70:20	229:14 230:2,4
108:13 112:7	120:14 150:17	75:5,14 82:7	231:17 232:3,8
122:22,23	151:22 175:5	82:12,23,25	238:8 244:4
123:8,9,13,15	177:7 189:16	116:18 123:24	261:19 316:9
126:7,10,13,22	196:24 198:17	123:25 138:23	316:17 317:8
127:24 128:17	211:11 212:13	140:3,5,15,15	texas 1:3 4:11
128:19,21	244:8 273:12	159:6 161:7,12	text 246:21
141:22 142:4,5	273:21,23	199:22 219:2,3	thank 5:15 33:3
142:6,10 179:8	278:20 285:11	220:15 233:12	70:9 77:19

[thank - think]

Page 71

104:19 114:2	73:25 74:25	35:19 37:7,15	131:15 134:10
310:11	77:10 79:13	37:25 38:7	136:18 137:3
theft 22:24	81:21 82:8	41:5 44:13	137:21 138:22
25:12	83:18 90:2	50:15 52:16	141:5,12,14
theirs 14:12	91:18 93:15	54:3,10 57:9	145:7,20,23,25
theoretically	97:9,20 98:10	62:19 64:15,19	147:3,17,20
128:24 235:15	98:17 99:15	65:24 66:20	149:7,11 152:3
thing 42:6	107:9,25	67:9 69:17	152:9,11,13
46:13 54:5	109:11 110:19	71:5 72:4,22	153:7,14,22
59:9 63:20	118:5 119:2	72:24 73:8	154:6,17 155:7
67:23 68:12	123:14 125:3	75:13 78:4	155:18,21
69:8,25 70:22	131:4 137:6	81:16 83:8	156:18 159:3,8
77:4 83:4 84:8	140:23 148:13	85:11,22 86:10	160:13 161:10
85:22 105:25	153:7 154:9	86:11,23 91:16	162:22 163:3
107:2 117:10	156:5 158:14	92:13 99:7	164:12,24
121:20 122:3,5	158:19 161:16	101:5 103:16	165:18 166:14
122:5 148:23	162:11 165:16	105:7 107:17	167:24 168:4,5
150:20 154:21	165:17 182:8	107:18,23	168:15 169:22
154:22 161:11	188:22 197:24	108:8,13,17	169:23 170:9
161:21 177:8	198:3,12	109:9,25	170:19,25
183:8,9 197:18	209:22 210:4	111:16,22	171:8 172:12
207:12,15	214:25 220:14	112:3 115:25	172:14,20
212:11 229:11	221:3,17 222:6	116:20,25	173:21,22
233:13 235:11	222:23 224:2	117:8,13,22,23	174:11,14,22
259:17 266:19	227:12,17	118:4,10,11,18	178:20 179:12
272:14 284:9	249:3 263:9	118:22,25	180:14,15,17
299:13 301:14	264:3 274:16	119:3,19,21	181:24 182:9
301:15 308:9	278:10,11	120:9 121:12	182:10 183:7
things 36:12	303:7 307:6	121:25 122:4	184:6,7,24
38:4 41:21	think 8:21 9:18	123:12,25	185:22 186:17
43:12 44:12	10:5,12 13:9	124:5,16,24,25	188:14 190:8
46:2,13 65:14	15:11 16:7,20	125:2,3,8,19,22	191:10 192:18
66:19 67:10	22:5 26:20	126:20,21	197:21 199:14
68:3 69:22,23	27:6 28:15,23	127:10,11	203:14,18
70:23 72:2	28:24 32:22	128:24 129:10	204:7,18,21

[think - time]

Page 72

206:12,16	third 27:24	118:8,15 119:7	249:4 274:13
207:9,22	54:17 55:4,12	120:6 121:8	tied 28:2
208:25 209:3	55:17,23 56:6	122:10 123:7	109:19 153:23
210:12 214:23	56:19 57:7,8	123:14 124:22	153:25 273:21
215:5,5 216:2	58:11,14 63:22	128:2 130:13	273:24
216:20 217:8	64:12 143:22	130:14 134:6	tier 27:22
217:10,14,16	143:22 193:10	135:20 143:16	ties 154:11
218:13,15,19	193:11,12	154:15 156:8	tightly 182:11
221:11 223:12	196:21 225:22	161:24,25	time 1:13 3:9
223:15 226:5	thorough	162:6 170:4,5	4:13,14 6:6
226:18 228:3,5	177:20	176:17 183:4	10:7,9,11
229:10,23	thought 32:19	183:16 185:7	12:14,17 16:18
230:8 233:16	45:14,15,16,21	185:20 200:23	17:17,23 19:10
233:18,24	52:2,7 137:22	201:13 204:2	21:20 25:9,23
235:3,7,18	215:13 223:10	207:14 233:23	26:2,6,7,11
236:18 239:21	223:11 262:14	234:7,22 236:7	38:20 44:16,20
241:11,12	262:15 278:21	240:8,9,19,19	46:7,9 50:8,11
243:3 244:5,12	289:21 309:6	241:8,9 243:15	52:17 53:3,22
249:5,20	thoughtful	244:10 247:16	54:18 55:2
255:11,16	84:19 104:18	247:23,24	56:5,23 57:11
259:12,16,25	120:25	249:24 251:21	57:24 59:4
261:25 262:6	thoughts	252:12,18	61:18 62:11,12
270:8,13	308:24 309:8	253:7,19	63:16 69:2,5
273:14 274:15	thousands 81:2	267:24 268:8	70:16,21 73:6
277:24 278:8	86:4 112:25	268:23 269:10	73:23,24 74:22
278:19 284:6	three 8:21 9:12	277:5,15 279:2	75:3 76:3,8
284:13 286:23	16:2 28:7,9	300:3,15,19,24	77:18 78:9
291:3,5 292:16	42:13 66:15	301:19 308:13	83:14,16 90:21
294:19,21	87:21 91:15	308:25	91:7,9 92:11
296:7,10,12	92:7 97:17,21	throw 75:14	93:8 94:3
303:17,20	98:7 99:10	127:18	95:15 96:2,24
306:11 308:3	102:6 109:12	ticking 274:18	97:25 98:5,15
thinking 96:24	110:11 115:20	tie 91:24 110:8	100:15 101:9
103:5 173:19	116:10,23	110:16,20	105:17 106:16
	117:11,12	162:3,4 249:2	107:11 109:5

[time - transcript]

Page 73

114:4,6,13,16	258:23,25	11:16 16:7	total 16:24
115:8 121:5	264:25 272:3	92:23 134:19	17:10 28:4
124:14,14	279:12,18	141:21 150:14	38:15 88:13
127:7,16	280:3,9 281:3	158:23 159:20	308:20
129:19,25	281:10,13	165:24 198:3,7	totality 40:11
130:9 132:22	283:3,16 284:2	205:5 212:22	40:24 41:2
133:4,9 134:22	284:18 286:18	227:10 290:22	totally 34:5
137:20 140:20	286:19 289:5	295:3	39:21 59:16,20
142:21 146:4,5	289:16,25	today's 7:10,16	303:22
146:18,19	290:2 292:21	8:15 9:4,8,16	toward 23:14
147:23 148:17	293:17,22,24	together	261:5 289:2
148:20 150:19	296:3 297:23	105:25 110:21	towards 85:24
151:8,20,21,23	298:7 299:18	228:21,22	87:8 255:21
152:2,24	300:10 301:17	249:2,4 299:12	track 18:4
154:25 156:22	306:23 307:2	token 206:17	92:22 105:20
157:2 159:18	308:4 309:5,19	told 151:20	142:10 154:19
165:10,13,16	311:9,10,12,13	278:15,19	305:24
169:4 170:13	313:12 316:18	tonight 146:9	tracking
171:7 177:2,5	timeframe 57:5	took 6:24 24:18	302:14 303:14
189:14 190:6	215:18 231:11	149:6 168:7	304:10 305:25
194:24 200:2	248:15 279:3	170:2,8 195:21	306:17
202:8,13,18	295:18 316:8	196:20 226:9	trade 105:16
204:2,24	timeline 295:11	226:23,25	trading 105:15
205:17 206:9	times 46:12	283:6 296:7,11	trained 136:24
206:10,17	54:3 110:24	top 11:7 12:3	136:25
208:13 214:17	159:17 231:6	31:12 41:18	training 45:17
215:20 227:11	280:7	71:4 72:11	131:5 149:9
227:19 230:16	tis 281:3	80:22 129:13	211:5 213:17
230:19,22	title 54:3 130:6	175:5,6 184:11	214:10,11
232:8 234:15	titled 299:6	184:19 255:12	215:3,8 218:12
235:13 238:3	315:8	279:14 282:9	218:14,20
245:2,10 246:3	titles 54:2	298:14	transaction
246:18 247:6	today 4:12,16	topic 48:5 67:3	303:6 306:7
248:17 255:17	5:13,17 6:11	topics 135:21	transcript 5:10
256:24 258:17	7:6,18 9:21	219:9	8:10 47:22,23

[transcript - under]

Page 74

48:15 313:14 313:17 316:6 316:19 317:5,8 transcripts 8:3 8:4,6,13,14,19 44:4,7 46:7 47:3 48:2 transition 130:12 135:23 transitioning 132:24 133:5 287:2 treat 137:9 treated 137:10 trial 3:9 30:24 31:3 tricky 305:20 trigger 127:15 188:19 triggered 245:11 triggers 129:10 true 94:3 300:11,13 313:14 317:8 trust 49:14,15 49:19 50:2 99:4 292:19 truth 7:2 313:9 313:10,10 truthfully 7:7 try 26:2 44:25 65:16 79:20 158:18 160:23 208:11	trying 31:11 32:22 41:23 46:3 102:10 151:17 159:6 165:23 171:4 191:18 216:2 235:23 252:23 278:22,23 tuned 139:9 turn 40:2,7 84:12,13 120:22 147:5 172:4 173:25 175:2 181:11 185:23 187:18 187:21 190:22 200:4 214:10 223:17 224:6 232:14 236:25 237:24 239:8 240:23,24 245:12,15 252:9 254:7,8 260:11 264:20 266:12 285:10 turned 224:25 turning 30:15 104:20 tweak 217:11 tweaks 255:12 two 7:11 9:18 12:8 20:16,21 22:18,21,23 31:18 35:23 40:6 54:21	64:6,7 67:5 101:6 102:10 102:18 107:24 120:14 121:15 121:16 123:21 135:19 143:25 159:12 182:9 182:11 196:22 199:24 217:16 218:6 224:15 225:11 249:2,4 258:13 294:14 tying 160:15 type 42:13 63:10 83:21 263:23 270:5 typed 42:15 types 72:19 265:9 typewritten 313:13 typical 16:25 53:2 64:7 71:11 74:25 94:21 173:13 173:16,18 187:12 293:14 298:25 typically 17:15 48:20 57:25 59:5,15 66:6 68:20 71:16 72:20 73:4,6 77:8 86:23 89:9 92:20	94:16 101:15 109:7 139:23 140:8 190:8 203:13 207:11 213:7 221:15 u ultimate 132:2 ultimately 83:24 98:3 102:17 130:12 133:3 161:20 236:6 298:4 unaware 235:9 unboard 43:4 uncertainty 86:2,5 unclear 202:6 270:23 uncommon 60:13 199:21 199:25 unconflicted 30:12 under 34:2 35:19 38:4 54:16 60:16 82:19 84:11 85:7 103:4 117:4 122:2 133:23 134:2,9 136:21 189:24 190:2 208:23 209:5 235:10 235:16,17 245:16,24
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[under - use]

Page 75

246:17 250:19 282:20 306:4 undergoing 255:15 underlying 124:22 126:12 154:16,24 163:17,23 164:15,20 170:4,15 186:6 186:12 201:5 202:14 255:5 256:11 257:21 257:22 266:5 269:6 271:22 299:24 underperform 202:2,22 277:14 280:4,4 280:5 underperfor... 85:3 116:9,14 116:23 118:15 124:10 127:2,8 127:9 128:5 154:10 156:24 157:9 169:7,18 170:19,21,23 186:9 189:3,8 189:13 190:5 190:17,19 203:16 204:24 205:3,10 208:12 278:9 279:22 280:13	287:18 301:19 304:13 underperfor... 115:20 121:7 127:25 128:22 278:20 279:2 underperfor... 84:9,10 117:12 126:12,14,20 154:11,23 170:7 171:12 190:21 200:23 203:23 204:4 204:10 205:7,8 206:18 208:11 280:19,20,21 300:3,10,19,23 301:2,6,9,12,25 306:15 underperforms 122:9 understand 5:17 6:3,19,24 7:4 18:21 44:22 46:4 64:19 66:20 78:12 92:13 99:19 103:19 106:19,23 117:3 124:12 128:12 129:6,8 129:19 148:8 151:17 156:11 157:8 162:18 165:14,22,23	168:23 191:18 208:11 215:25 246:8,22 252:23 287:17 299:23 310:3,7 understanding 55:14 193:13 218:17 234:19 235:20 304:11 304:12 understood 6:22 19:19 36:14 43:22 45:23 52:4 66:2 106:13 219:11 undertaken 239:17 undertook 165:5 underwent 212:25 undetected 240:10,20 242:4 unengaged 207:19 unfortunately 235:8 unit 311:5 united 1:2 4:10 unitedhealth 31:5,17,24,25 32:6	unpack 73:25 unquote 15:17 70:19 97:13 227:7 unreasonable 153:6,20 154:4 158:13 159:2 159:22 160:20 161:7 228:25 unsophisticat... 207:18 unstable 176:24 unsuitable 232:25 233:7 unusual 91:8 139:25 143:24 192:6 193:6,7 updates 216:11 217:21,22 upfront 213:24 upgraded 235:3 ups 88:4 100:5 upside 65:13 68:20 use 23:25 35:20 48:17 65:4,6 68:11,15 82:21 82:24 83:9 89:5 92:17 96:7 97:2 110:7 113:11 113:12 123:20 125:17 143:25
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[use - visualization]

Page 76

145:12 162:24 190:14 221:12 226:16,19 used 65:16 66:8 66:13 67:5 68:9 82:23 91:6,10,12 96:18,19 113:8 143:8,9 145:7 162:2 172:20 235:7 236:3 296:25 299:2 316:19 uses 35:22 66:17 174:16 using 80:19 89:4 113:7 163:5 191:3 233:14,14 234:15 235:5,6 271:21 302:24 302:25 usual 115:24 259:15 usually 107:5 124:11 135:14 172:3 189:4 190:9,10 207:7 utilized 145:6 utilizing 31:25	validated 285:8 valuation 54:20 55:21 value 67:15 94:7,19 242:12 308:22 van 90:14 96:8 vanguard 306:5 vanguards 305:23 vanilla 192:23 vantage 206:13 varied 57:24 205:6,8 206:12 varies 16:4 variety 103:2 various 40:6 71:13 72:14 75:5 76:8 123:11 124:20 214:25 258:12 266:14,17,20 266:21 267:19 268:5,9,12 269:7,25 270:2 286:4 vary 134:15 173:15 vast 80:10 93:21 144:16 verbally 220:5 verify 316:9 veritext 4:16,20 312:1 316:14	316:23 veritext.com. 316:15 versa 162:13 version 15:8 28:22 173:5 231:14 233:14 versions 96:20 184:25 versus 4:8 27:2 29:14,15,20 31:5 33:4 34:19 36:15 66:9,10 98:18 100:21 101:5 103:12 108:3,4 108:14,25 109:6,7 140:24 183:13 189:11 265:5 271:15 277:14 299:6 299:15 303:20 315:9 vice 23:5 162:13 victory 308:21 video 4:3,15 311:4,6 videographer 2:15 4:2 12:13 12:17 50:7,11 68:25 69:5 114:13 115:8 148:17,20 177:2,5 230:19	230:22 281:10 281:13 306:23 307:2 311:2 view 14:8 30:12 65:19 67:16 77:25 121:10 122:9 153:6 172:9,11,19 173:4 185:5 197:7 218:12 228:25 234:16 253:14 297:11 viewed 45:13 vintage 123:22 124:7 205:3,3 205:9 255:10 270:3 277:18 vintages 122:24 123:2,11,16 124:21 126:12 258:12 267:20 268:17 269:7 269:25 276:24 286:4 300:8 virtual 1:16 4:3 311:6 virtually 40:25 visconti 1:18 4:19 313:5,25 visibility 130:24 visit 83:13 visualization 100:19
v			
v 316:4 317:1 vacuum 109:10 valid 81:15			

[voice - way]

Page 77

voice 192:8	38:14,22 39:22	253:21 254:7	181:11 182:20
volatile 98:9,11	40:7 44:17	259:3 260:2	183:12,24
98:13	45:12,21 48:16	270:14 275:13	185:24 186:24
volatility 97:25	49:7 56:11	285:18	188:7,24 203:8
99:18,20,21	66:18 73:25	wanted 15:2	203:25 204:4
100:20 102:3,4	78:14 79:13,15	43:10 47:25	208:10 229:21
112:8,12,13,15	79:16,17,23	72:17 137:2,4	229:22 233:21
volunteering	81:13 88:7,12	143:5 149:13	233:21 236:15
155:15	88:13 92:3	162:21,24	240:16,24
vote 226:9,10	102:3,5,9	164:14 212:21	251:19 258:24
226:23,25,25	103:21 104:20	278:20 293:18	259:18,19
227:5,24 228:4	105:4,24,25	wanting 164:20	watching 92:24
228:18,22	106:18,19,22	wants 111:6	waterline
230:2,10	108:7,18	warranted 73:9	206:19
voted 229:19	109:10 111:23	287:23	way 15:13
votes 228:14	113:14,16	watch 82:21	23:17 30:19
229:15,18	119:22,24,25	83:3,25 84:3	38:7,8,8 41:21
voting 226:4,7	120:5 124:6,12	84:23 85:7	48:18,20 49:11
226:17	131:11 135:15	110:14 111:7	51:25 81:17
w	137:3,23 138:6	111:20,25	82:8 83:5
wachala 29:14	139:8 144:8,12	115:23 116:4	85:18 87:23
wait 102:24	146:15 152:12	116:13,22	88:5 90:19
118:3 119:25	156:12 157:14	117:11,12,15	91:23 96:25
270:21	158:19 160:22	117:20,21	104:3 110:25
waited 258:13	160:23 161:3	118:3,11,12	131:4 135:18
waived 3:5	161:21 162:23	119:21,25	136:3,7 137:2
waldner 33:4	163:4,7,11	120:2,12	137:9 145:20
33:19	164:8 165:3	122:18 154:8,8	145:22 149:14
walk 20:12	170:14 187:18	154:9,12,13,14	154:13 159:10
walked 82:7	188:16 198:23	154:24 156:7	159:11,15,16
216:23	203:21 210:12	168:2 169:17	168:10 193:7
walking 84:3	216:25 218:23	169:20,21,23	194:23 197:19
walnut 2:3	223:8,17	169:25 170:2,3	203:13 206:14
want 6:8 11:21	229:24 231:4	170:8,12,14,18	209:2,4,9
18:9,11 31:20	236:8 245:15	170:24 177:16	213:3 219:12

[way - yeah]

Page 78

227:23 228:6 229:10 230:9 230:11,13 251:3 285:24 289:2 291:7 295:2 303:21 309:6,24 ways 101:6 108:22 144:2 162:6 214:2 222:16 we've 94:9,10 94:11 262:14 wealth 272:24 273:6 week 10:4,5,10 weeks 196:18 welcome 115:13 wells 32:2,4,9 went 14:24 23:23 30:16 32:14 43:20 44:20 46:4,11 50:3,15 54:4 59:13 64:8 74:2 98:19 127:4 129:16 141:16 156:4 168:19 173:5 181:19 196:17 206:11 211:22 213:5,7,11,11 213:16,20,22 216:2 232:9	236:5 277:17 283:13 284:19 297:18 299:16 west 308:20 whittle 92:18 whittled 95:2 97:11 wife's 38:25 william 1:18 4:19 313:5,25 williams 34:19 withdrawals 254:16 witness 1:17 5:4 183:6 186:16 242:13 252:22 258:4 310:12 313:8 313:22 316:8 316:10,12,18 woefully 191:4 191:13,21,24 wondering 14:11 158:23 word 44:10 66:23 162:24 162:25 190:10 218:15 words 15:10 70:18 127:13 191:3 273:9 work 15:2,25 26:21 37:20 39:17,24 41:22 57:20 60:20	62:2 75:17 79:6 81:8,16 84:4 87:11 91:6 97:12,13 99:13 103:19 105:15 114:10 136:21,21 141:15 142:14 171:21 272:17 worked 13:17 14:2 37:18 57:18 60:16,16 94:24 136:14 137:13 141:4,7 193:4,9 212:6 212:24 221:6 263:6 264:6 283:14 296:5 296:10 workforce 89:20 working 20:22 26:19 58:3 80:2,2 83:5,12 130:9 134:23 140:20,20 231:12 263:21 273:8 274:13 274:14,21 275:11 285:4 290:23 works 273:22 274:7 world 33:23 75:7,9 108:25	worried 113:3 worry 107:15 worse 119:17 170:2 worth 25:25 54:19 55:6,7 55:18 would've 93:11 wow 129:2 wrap 30:17 281:8 306:21 307:6 writing 130:18 138:8 written 38:5 111:15 182:10 wrong 117:19 163:6 192:14 192:16 217:22 249:7 266:19 266:22 wrote 14:5 21:17 42:9 150:21 188:15 202:19 203:2 x x 1:5,11 90:24 313:17 314:2 315:2 xyz 46:5 y yeah 16:14 23:12 24:16 38:21 51:18
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[yeah - zoom]

Page 79

52:2 60:11	247:23,24	199:3
74:21 82:14	248:5,8,10,23	york 1:19 312:2
95:24 103:22	249:8,10,24,24	313:2,4,6
119:15 173:14	249:24 250:4	z
173:15 193:21	250:16,23	zoom 1:16
226:5 234:22	251:23 252:3	17:14
261:10 310:7	252:12,18	
year 11:22 39:5	253:7,19 268:4	
61:8 64:9	268:8,12,23,23	
86:18 90:6,7	269:10,14	
91:17 98:21	277:3,5,15,15	
109:12,12,12	279:3,3 284:21	
109:13,13	284:22 288:12	
110:12,12,13	288:15 294:24	
110:15 115:21	300:3,4,15,16	
116:5,10,10,23	300:20,20,24	
116:23 117:11	300:24 301:19	
117:11,12,13	301:20 309:16	
118:8,15,16	years 19:3,7,8	
119:7,7 120:6	32:3 38:5	
121:8 122:10	57:15 64:23	
122:10 123:7,7	81:19,20 86:16	
124:22,23	88:11 89:21	
128:2 130:13	91:20,22 96:3	
152:22 154:15	102:22,24	
156:8 161:25	109:16 130:14	
170:5,6 176:17	141:25 184:2	
176:17,17	210:8 214:23	
183:5 185:7,21	217:17 251:21	
200:24 201:13	254:17 258:13	
204:2 240:8,9	267:25 297:17	
240:19,19	304:5	
241:8,9 243:15	yesterday 9:12	
244:11 247:15	9:15,19 198:9	
247:15,16,23	198:11,20	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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